



PSERB Resolution 2025-34

Re: Kaszubowski J., Docket No. 2022-18

June 13, 2025

RESOLVED, that in the matter of Jill H. Kaszubowski, Docket No. 2022-18, the Public School Employees' Retirement Board hereby accepts the recommendation of the Benefits and Appeals Committee and adopts the proposed Opinion and Order of the Board and dismisses Claimant's appeal with prejudice.

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PSERB
EXECUTIVE OFFICE

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC SCHOOL EMPLOYEE'S RETIREMENT BOARD**

IN RE: Account of Jill H. Kaszubowski,

 Claim of Jill H. Kaszubowski

Docket No. 2022-18

PROPOSED OPINION AND RECOMMENDATION

**Peter D. Kovach
Hearing Officer**

Date of Hearing: May 22, 2024
Hearing Officer: Peter D. Kovach
For Claimant: Brian P. Litzinger, Esquire
For PSERS: Cayla B. Jakubowitz, Esquire

BACKGROUND AND PROCEDURAL HISTORY

This matter comes before the Public School Employees' Retirement Board ("Board") based upon an appeal and request for hearing filed by Brian P. Litzinger, Esquire ("Attorney Litzinger") on behalf of Jill H. Kaszubowski ("Claimant") on November 7, 2022. In her appeal, Claimant challenged the determination contained in a letter dated October 6, 2022, informing Claimant of the decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") which denied Claimant's request to purchase her out-of-state service from Arizona. On November 18, 2022, PSERS filed its Answer to Claimant's appeal.

By letter dated June 30, 2023, Board Secretary Terrill J. Sanchez appointed the undersigned to act as the Hearing Examiner for Claimant's administrative appeal. By letter of the same date, the Board's Appeal Docket Clerk notified Attorney Litzinger that the administrative hearing regarding Claimant's appeal was scheduled for Wednesday, November 8, 2023, at the offices of PSERS in Harrisburg.

On November 7, 2023, Attorney Litzinger transmitted a letter through the PSERS docket clerk which indicated Claimant's intention to call an unidentified representative of the Arizona State Retirement System ("ASRS") to testify during the next day's hearing. Attorney Litzinger's communication also noted that ASRS expressed concern regarding appearing by video conference format.

A telephone conference was held on November 7, 2023, between the undersigned hearing examiner, Attorney Kitzinger, and the attorney representing PSERS in the appeal, Cayla B. Jakubowitz, Esquire ("Attorney Jakubowitz"), regarding the practicalities and objections to receiving telephone-only testimony from an unidentified ASRS representative the next day. As a result of the letter and telephone conference, on November 7, 2023, an *Order Continuing Hearing*

was issued which continued the November 8, 2023 hearing until a date after March 1, 2024, and which also set February 1, 2024, as the date for a prehearing conference. On November 20, 2023, a *Prehearing Conference Order* was issued confirming the date of the prehearing conference as February 1, 2024. The *Prehearing Conference Order* also required the parties to exchange their proposed exhibits and witness lists with the filing of the prehearing statements, and set forth the due date and necessary content of the parties' prehearing statements.

On January 26, 2024, PSERS filed its prehearing statement. Claimant did not file a prehearing statement. Attorney Litzinger did participate in the February 1, 2024 Prehearing Conference, and explained that he thought he had filed his prehearing statement prior to the November 8, 2023 hearing.

By letter dated February 5, 2024, the docket clerk advised the parties that the hearing in the above-captioned matter was rescheduled for May 22, 2024. The hearing was held as scheduled. Claimant attended the hearing and was represented by Attorney Litzinger. Attorney Jakubowitz represented PSERS. Claimant testified on her own behalf. Claimant offered into evidence 20 exhibits.¹ PSERS presented its case through nine (9) exhibits admitted into evidence, as well as the testimony of Terrell Davenport, Purchase of Service Supervisor for PSERS.

At the end of the hearing, Claimant indicated on the record a desire to file a post-hearing brief in lieu of closing arguments; PSERS also indicated its preference to file a post-hearing brief instead of a closing argument. The parties were advised that a briefing scheduling order would be issued after the hearing officer was advised that the transcript had been received, and that specific

¹ Page 3 of the Notes of Transcript (N.T.) does not record the pages on which Claimant's Exhibits 1-20 were admitted into evidence. Claimant's exhibits were moved into evidence *en masse* at the end of Claimant's testimony. (N.T. 62). PSERS objected to Claimant Exhibits 1, 5, 6, 9, and 20, generally due to hearsay concerns. (N.T. 62-63). Each of Claimant's exhibits were ultimately admitted, subject to weight and credibility determinations. (N.T. 64).

due dates would be included in the briefing order. Attorney Litzinger requested a generous briefing period owing to the small size and general practice nature of his firm.

On June 25, 2024, the hearing officer was advised that the transcript had been received by PSERS' docket clerk. A *Briefing Scheduling Order* (the "Briefing Order") was issued on July 16, 2024, which set forth the briefing requirements, established the filing deadlines for both parties' primary briefs, and also established Friday, October 4, 2024 as the filing deadline for Claimant's reply to any brief that PSERS filed (or provide written notification that no brief would be filed).

Ultimately, Claimant did not file a primary post-hearing brief or request an extension of the due date for the filing of Claimant's primary brief. PSERS did file a its post-hearing brief on September 13, 2024, entitling Claimant (as the party with the burden of proof), the opportunity to file a reply brief. Claimant also did not file a reply brief by October 4, 2024, or otherwise provide notice that a reply brief would not be filed. Therefore, the record was deemed closed the next business day after the reply brief was due – in this case, the record was deemed closed on Monday, October 7, 2024. Accordingly, the matter is now ripe for disposition.

FINDINGS OF FACT

1. Claimant taught first and second grade for the Creighton School District #14 in Phoenix, Arizona ("CSD") from September 1982 until June 1991. (Notes of Testimony ("N.T.") 10; Exhibit PSERS-1).

2. CSD is a public school district in Arizona. (N.T. 10).

3. While working in Arizona, Claimant participated in, and made contributions to, the Arizona State Retirement System ("ASRS"). (N.T. 11; Exhibit PSERS-1).

4. Claimant initially participated in the State Employee's Retirement System ("SERS") in Pennsylvania while she worked for a bookstore at Indiana University of Pennsylvania while she was attending college in Pennsylvania. (N.T. 48-49, 70, 95).

5. Claimant first qualified for and became a PSERS member during the 1998 school year when she began her employment with the Indiana Area School District. (N.T. 12, 94-95).

6. An individual qualifies for membership in PSERS by working for a Pennsylvania public school employer in a full-time position, part-time salaried position, or by working 500 hours or 80 days in a school year. (N.T. 94-95).

7. Claimant is a Class T-D member of PSERS. (N.T. 95).

8. Beginning in December 2018 through the present, PSERS' public website specifically notified members of the following:

If you withdrew your former employer's contributions, you are not eligible to purchase out of state service because receiving employer contributions is considered a retirement benefit.

(Exhibit PSERS-6); N.T. 109-10.

9. In the summer of 2020, Claimant printed the PSERS *Purchase of Out-of-state Service* form off the website and believes she probably scanned through the eligibility requirements on the PSERS' website. (N.T. 59, 71, 76-77).

10. The *Guidelines for Completing Your Purchase of Out-of-state Service*, which came with the purchase form Claimant printed, included the following notice:

If you receive or will be eligible to receive a retirement benefit from any other private or public pension fund based on your out-of-state service, you may not purchase retirement credit for your out-of-state service with the Pennsylvania Public School Employees' Retirement System (PSERS).

(N.T. 80, 113-114; Exhibits Claimant-2, PSERS-9).

11. On December 22, 2020, PSERS received a request from Claimant for an estimate of the cost to purchase Claimant's prior out-of-state service rendered in Arizona. (N.T. 110-112; Exhibit PSERS-7).

12. The December 22, 2020 *Purchase of Out-of-state Service* estimate request form submitted to PSERS was incomplete, but did include the first page of Claimant's *ASRS Account Summary*. (N.T. 110-112; Exhibit PSERS-7).

13. Claimant had also received a second page of information with the *ASRS Account Summary*; the second page was entitled *Understanding Your ASRS Account Summary*. (N.T. 79, 111-112; Exhibit Claimant-1, pg. 2).

14. Claimant did not send to PSERS the *Understanding Your ASRS Account Summary* page. (N.T. 79, 111-112; Exhibit PSERS-7).

15. The *Understanding Your ASRS Account Summary* page indicated that Claimants refund included a portion of her employer's contributions. (N.T. 111-112; Exhibit Claimant-2, pg. 2).

16. In Claimant's December 22, 2020 request for an estimate, Claimant did not request a determination whether she was, or would be, eligible to purchase her out-of-state service. (Exhibit PSERS-7).

17. Claimant's December 22, 2020 estimate request did not contain any indication that Claimant intended to withdraw her employer contributions from ASRS. (N.T. 77-78, 112; Exhibit PSERS-7).

18. By letter dated December 30, 2020, PSERS responded to Claimant's request, providing an estimate of the cost of purchasing the service credit, and notifying Claimant that, prior to purchasing the service credit with PSERS, she would need to withdraw her contributions and interest from the out-of-state retirement system and provide proof of the refund. (N.T. 79-80, 112-113; Exhibit PSERS-8).

19. Beginning in March 2021, an updated purchase form and guidelines, available on PSERS' website, notified members:

To purchase service with the Public School Employees' Retirement System (PSERS), you cannot be receiving, have received, or be eligible to receive a benefit from the out-of-state system. If you have not received a benefit, you will be required to withdraw from the out-of-state pension system. Such withdrawal may include only your employee contributions and the interest on your employee contributions. Warning: Any withdrawal that included or includes employer contributions, interest on employer contributions, an employer match of employee contributions, or any employer match of interest earned on employee contributions will make you ineligible to purchase out-of-state service with PSERS.

(Emphasis in original) (N.T. 115-116; Exhibit Claimant-18).

20. ASRS allowed Claimant to choose either to receive a monthly annuity from ASRS or to refund to Claimant the contributions made to ASRS. (N.T. 85, Exhibit PSERS-7, pg. 5).

21. If Claimant had decided to take a monthly annuity from ASRS rather than withdrawing contributions from the system, she could have received a monthly benefit of approximately \$388 beginning in October 2023. (N.T. 83; Exhibit PSERS-7, pg. 5).

22. On February 19, 2022, Claimant applied to withdraw contributions and terminate membership with ASRS. (N.T. 26-27; Exhibit Claimant-5).

23. In February 2022, ASRS processed Claimant's request and disbursed a total of \$97,721.01 to Claimant. (N.T. 51, 73-74, 82; Exhibits Claimant-5; Claimant-6; Claimant-9).

24. Of the \$97,721.01 disbursed by ASRS, \$53,452.00 represented Claimant's own contributions, \$40,238.06 represented Claimant's employer's contributions, and \$4,030.95 represented non-taxable employee contributions. (N.T. 51, 82; Exhibit Claimant-9).

25. Claimant's total withdrawal of \$97,721.01 in contributions from ASRS equates to receiving a \$388 monthly annuity for approximately 21 years, from October 2023 until October 2044, not accounting for the investment earnings on the lump sum withdrawal. (N.T. 84-85; Exhibits Claimant-9; PSERS-7, pg. 5).

26. Claimant rolled the funds received from ASRS into Claimant's individual 403(b) retirement account, including the \$40,238.06 in employer contributions. (N.T. 51, 82-83, 85).

27. While Claimant has elected to continue investing the ASRS funds through her 403(b) retirement account, Claimant can choose to withdraw the funds in her individual retirement account for her present use or continue to invest the funds for her future use. (N.T. 82-83).

28. Prior to withdrawing the funds from ASRS, Claimant called PSERS to ask about purchasing out-of-state service, but did not ask PSERS about withdrawing employer contributions from ASRS. (N.T. 47-48, 86).

29. On March 18, 2022, PSERS received a *Purchase of Out-of-state Service* form from Claimant, through which she requested to purchase service credit with PSERS for time worked with CSD from 1982-1991. (N.T. 71-73, 96; Exhibit PSERS-1).

30. Page 3 of the *Purchase of Out-of-state Service* form, which was completed and certified by ASRS, indicates that Claimant enrolled in a contributory retirement plan through her

service in Arizona, she vested in the retirement plan, and she withdrew both employer and employee contributions from that retirement system. (N.T. 100-101; Exhibit PSERS-1, pg. 3).

31. A contributory retirement plan is one where the member contributes to the fund. (N.T. 100).

32. When a member indicates that (s)he was previously in another state's contributory retirement plan, PSERS reviews the purchase-of-service request to ensure that the member receives only their contributions from the out-of-state retirement system, and is not eligible for a retirement benefit in the future from the other state. (N.T. 101-102).

33. By letter dated March 28, 2022, PSERS notified Claimant that her request to purchase credit for out-of-state service was denied because she had withdrawn both employer and employee contributions from the out-of-state retirement system. (N.T. 102-104; Exhibit PSERS-2).

34. On April 8, 2022, PSERS received an additional *Purchase of Out-of-state Service* form from Claimant, through which she again requested to purchase service credit with PSERS for time worked with CSD from 1982-1991. (N.T. 105; Exhibit PSERS-3).

35. In Section F of the April 8, 2022 submission, an 'X' was marked over the box for "Withdrawn," as well as an 'X' over the box for "Both," again indicating that Claimant withdrew both employer and employee contributions from ASRS. (N.T. 105-06; Exhibit PSERS-3, pg. 2).

36. By letter dated April 25, 2022, PSERS notified Claimant that her request to purchase out-of-state service was denied because she had withdrawn both employer and employee contributions from the out-of-state retirement system. (N.T. 106-107; Exhibit PSERS-4).

37. Claimant appealed PSERS' denial of her request to purchase service to the ESRC. (N.T. 107).

38. The ESRC is a committee at PSERS that reviews member appeals. (N.T. 107).

39. In the summer of 2022, Claimant retired. (N.T. 95; Exhibit Claimant-15; Claimant-16).

40. When selecting a retirement option from PSERS, Claimant could have chosen to leave her contributions and interest with PSERS and receive a higher monthly annuity, or withdraw her contributions and interest and receive a lower monthly annuity. (N.T. 51-52; Exhibits Claimant-14 through Claimant-17).

41. Claimant chose to withdraw all her contributions and interest from PSERS, roll them into an individual retirement account, and receive a lower monthly annuity because she wanted more control over the funds for her use and investment. (N.T. 51-52; Exhibits Claimant-14 through Claimant-17).

42. By letter dated October 6, 2022, the ESRC denied Claimant's appeal and provided a summary of the basis for ESRC's decision. (N.T. 107-108; Exhibit PSERS-5).

43. On November 7, 2022, Claimant appealed the ESRC's decision and requested an administrative hearing. (N.T. 108; Docket at 2022-18).

44. On November 18, 2022, PSERS filed an Answer to Claimant's appeal. (Docket at 2022-18).

45. On May 22, 2024, an administrative hearing was held before Hearing Examiner Peter D. Kovach, Esq. Claimant appeared, was represented by legal counsel, had an opportunity to testify on her own behalf and offer her own exhibits into evidence, had an opportunity to object to the testimony and exhibits offered by PSERS and to cross-examine PSERS witness, and was offered the opportunity to file post-hearing briefs in this matter. (N.T., *passim*; Docket at 2022-18).

CONCLUSIONS OF LAW

1. Claimant was afforded notice of ESRC's determination and was provided an opportunity to be heard in connection with her appeal. (N.T., *passim*; Findings of Fact ("F.F.") 42-45).
2. Claimant has the burden of proof in this proceeding. (*Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991)).
3. The burden of proof to be applied in this administrative action is the preponderance of the evidence standard. (*Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *petition for allowance of appeal denied*, 602 A. 2d 863 (Pa. 1998); *Suber v. Pennsylvania Commission on Crime and Delinquency*, 885 A. 2d 678 (Pa. Cmwlth. 2005)).
4. Claimant has only those rights recognized by statute and none beyond. (*Bittenbender v. State Employees' Retirement Board*, 622 A. 2d 403 (Pa. Cmwlth. 1992); *Forman v. Pub. Sch. Emps.' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001)).
5. To purchase out-of-state service credit with PSERS, a member cannot be otherwise eligible to receive any government or employer funded retirement benefits for that service. (24 Pa.C.S. §§ 8102 at Creditable nonschool service, 8304).
6. When another state's retirement plan, regardless of whether it is a defined benefit plan or a defined contribution plan, allows a member to withdraw employer contributions, members selecting that option are receiving a benefit presently and in the future through the use of the withdrawn funds. (24 Pa.C.S. § 8304(a); *Esch v. Pennsylvania Pub. Sch. Employees' Ret. Bd.*, --- A.3d ----, 1319 C.D. 2023, 2024 WL 4862958 (Pa.Cmwlth. Nov. 22, 2024)).
7. Claimant's rollover of her employer's contributions from ASRS into her 403(b) retirement account is a retirement benefit that disqualifies her from purchasing out-of-state service credit with PSERS for her Arizona service. (F.F. Nos. 1-41; *Esch*).

DISCUSSION

BURDEN AND DEGREE OF PROOF

It is well established that Claimant bears the burden of proving the facts necessary to sustain her claim. *See, Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Ret. Bd.*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). Further, it is well established that the PSERS is a creature of the legislature, and its members only have those rights created by the Retirement Code and none beyond. *See, e.g., Burris v. State Employees' 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, 779 (Pa. Cmwlth. 2011). Equitable relief is not an available remedy under the Retirement Code. *Finnegan v. Public School Employees' Ret. Bd.*, 560 A.2d 848, 851 (Pa. Cmwlth. 1989), *aff'd*, 591 A.2d 1053 (Pa. 1991).

The degree of proof required to establish a case before an administrative tribunal is a preponderance of the evidence standard. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is "the lowest degree of proof recognized in civil judicial proceedings," *Id.* citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). It 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 proponent's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery*, 70 A.2d at 856.

EVALUATION OF CLAIMANT'S CLAIM

In this matter, Claimant comes before the Board requesting that she be permitted to purchase her out-of-state service reflecting her employment with a public school district in Arizona, the CSD, in the 1980s into the early 1990s. During her time of employment by CSD, Claimant made her own contributions into ASRS (the state retirement benefit agency in Arizona). However, CSD, Claimant's public school employer in Arizona, also made contributions into ASRS on Claimant's behalf.

Eventually, Claimant left Arizona, returned to Pennsylvania, and became employed by the Indiana Area School District. As Claimant's retirement approached, on December 22, 2020, Claimant requested from PSERS an estimate of the cost to purchase her out-of-state service from her time working as a public school teacher for CSD in Arizona. The evidence indicates that Claimant included with her written request the first page of Claimant's *ASRS Account Summary*, but did not include a copy of the second page of the ASRS summary, which clarified that any refund would include a portion of her employer's contribution.

Claimant's December 22, 2020 estimate request did not ask for any form of 'official' determination whether she was eligible to purchase some or all of her out of state service, nor did it contain any overt indication that she might elect or be required to withdraw the employer's contributions which had been made to ASRS on Claimant's behalf.

On or about December 30, 2020, PSERS provided Claimant with a written estimate of the cost of purchasing the service credit which Claimant claimed to have accrued through her work in Arizona. The December 30, 2020 response also advised Claimant that prior to purchasing her service credit with PSERS, Claimant would need to withdraw her contributions and interest from the out of state retirement system and provide proof of the refund.

Ultimately, Claimant did terminate her membership with ASRS in February 2022, and received a refund of approximately \$97,700 from ASRS in lieu of receiving any future monthly retirement benefit from ASRS (estimated at approximately \$388.00 per month). The evidence indicates that Claimant received not only her own contributions made to ASRS, but also a portion of Claimant's employer's contribution to ASRS. Claimant put all of the funds she received from ASRS into a 403(b)² account.

On or about March 18, 2022, Claimant submitted a request to PSERS to purchase her out-of-state service representing the time when she had worked at CSD in Arizona from 1982-1991. The documentation completed by ASRS and submitted to PSERS revealed that Claimant had withdrawn not only her own, but also her employer's contributions from the ASRS system.

For reasons more fully set forth below, the Hearing Officer and Board are bound by the statutory scheme of the Code and a recently issued appellate ruling indicating that Claimant is ineligible for the purchase of her out-of-state service under the circumstances.

CLAIMANT IS NOT ENTITLED TO PURCHASE CREDIT FOR HER SERVICE IN ARIZONA

Section 3804 of the Public School Employees' Retirement Code³ ("Retirement Code"), specifies that one of the prerequisites to purchasing out-of-state service credit is that the member seeking to purchase:

[i]s not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency or by any private employer, or a retirement program... "

See, 24 Pa.C.S. § 8304.

² "A 403(b) plan (tax-sheltered annuity plan or TSA) is a retirement plan offered by public schools and certain charities. It's similar to a 401(k) plan maintained by a for-profit entity." <https://www.irs.gov/retirement-plans/irc-403b-tax-sheltered-annuity-plans>, last visited December 1, 2024.

³ 24 Pa. C.S. Part IV

As a general rule, employee-only contributions are the employees' funds and are not a government-funded retirement benefit. Accordingly, members may typically withdraw their own contributions from an out-of-state system and purchase the concurrent service with PSERS. *See, Barcus v. State Employees' Ret. Bd.*, 463 A.2d 490, 491 (Pa. Cmwlth. 1983); *Cook v. Pub. Sch. Employees' Ret. Bd.*, 507 A.2d 911, 912 (Pa. Cmwlth. 1986) (holding that a PSERS member, like a SERS member, can purchase out-of-state service with PSERS if they withdraw their own contributions from the out-of-state system, regardless of whether they would have been eligible for an annuity if they left their contributions with that system). As PSERS implies in its post-hearing brief, had Claimant only withdrawn her own contributions, and not her employer's, she may have been permitted to purchase the out-of-state service. That circumstance, however, is not consistent with the facts of this matter and not before the Board. Instead, the issue before the board is whether Claimant may purchase out-of-state service when Claimant withdrew both her own, as well as her employer's contributions.

As a general proposition, the Retirement Code indicates that as soon as a member withdraws an **employer's** contributions from a retirement system and directs them into a retirement account controlled by the individual employee, such action constitutes a benefit received by that employee. *See e.g.*, 24 Pa.C.S. § 8304(a). That is because the pot of money in the individual's retirement account will now include not only the contributions made by the employee and any potential earned interest and/or investment gains on the employee's contributions, but it also includes any amounts the employer has directly contributed to the account, as well as the potential interest and/or investment gains based upon the employer's contribution. In short, the employee now has something of value (s)he otherwise would not, *i.e.*,

additional funds provided by an employer in an individual retirement account which may be susceptible to withdrawal for personal present use.

The circumstances in this matter are almost directly parallel to the circumstances recently ruled upon by the Commonwealth Court in Esch. The claimant in Esch similarly worked in Arizona as a teacher; she had accumulated approximately 12 ½ years of service with the ASRS. Like the claimant in this matter, both Esch and her school employer made contributions on Esch's behalf into ASRS.

Eventually, Esch moved back to Pennsylvania in 2001 and began working for a Pennsylvania Intermediate Unit as an itinerant teacher of the deaf at Pine-Richland School District. Like Claimant, Esch also became enrolled in PSERS and eventually sought to purchase her service credit from PSERS for the time she had spent teaching in Arizona. Like Claimant, Esch also terminated her membership with ASRS and rolled the entirety of her ASRS account into a 403(b) retirement savings account. That payout from ASRS, like Claimant's payout, included both the employee contributions, as well as the employer contributions made on Esch's behalf

The Commonwealth Court in Esch agreed that the determination whether Esch could purchase the service credit was controlled by Section 8304(a) of the Retirement Code, 24 Pa.C.S. § 8304(a), which provides, in relevant part, as follows.

Creditable nonschool service:

(a) Eligibility.--An active member or a multiple service member who is an active member of the State Employees' Retirement System shall be eligible to receive . . . service credit for creditable nonschool service . . . provided that he is not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency or by any private employer, or a retirement program approved by the employer in accordance with section 8301(a)(1) (relating to mandatory and optional membership), and further provided that such service is certified by the previous employer and the manner of payment of the amount due is agreed upon by the member, the employer, and the board.

(Emphasis added).

In evaluating Section 8304(a), the Esch Court further agreed with, and restated its prior interpretation from Morris v. Public School Employees' Retirement System, 538 A.2d 1385, 1389 (Pa. Cmwlth. 1988), that the clear purpose of Section 8304(a) was “to prevent individuals from receiving credit in two retirement systems for the same service.” Because Esch (like Claimant) had already received both her own contributions as well as her employer’s contributions made into ASRS, and then rolled all of those funds into a 403(b) retirement account, the Esch Court determined that Esch (like Claimant) had:

already received the full value of her retirement benefit for her [] years of out-of-state service, and she continues to receive the benefit of those funds to spend or invest as she deems appropriate. Under the plain language of Section 8304(a), as interpreted by this Court in Morris, Claimant cannot purchase credit for the same service that she rendered in Arizona with PSERS. To hold otherwise would allow Claimant to circumvent the Code’s restriction on receiving a duplicate benefit for the same period of service.

Esch at *4 (Pa.Cmwlth. Nov. 22, 2024).

Even had Claimant alleged something to the effect of ‘....but I have not spent the money, it’s still in my 403(b),’ such a consideration would not be sufficient to change the nature of the instant matter. She received her Arizona employer’s contributions, and it cannot be deemed to be something other than an employer benefit. In other words, what a person does with employer benefits/contributions once those funds leave the custody of the sister state’s retirement system is immaterial to whether the employers’ contributions are considered a benefit. This is without regard to whether all of the money was immediately rolled over into what might be deemed to be a financially sound investment vehicle such as a 401(k) or 403(b) plan. Where the money goes is not a factor to be contemplated pursuant to the statutory scheme of the Code.

Claimant has received the benefit of those employer funds and may spend or invest them as she deems appropriate. Therefore, the instant the Arizona **employer** contributions left the

ASRS account and came under some level of control by Claimant, regardless of those funds' final destination, Claimant received an employer "benefit" and therefore is disqualified pursuant to 24 Pa.C.S. § 8304 from purchasing the corresponding service time.

Because the Retirement Code prohibits PSERS from providing credit for non-school service when an applicant has already received a benefit from a governmental agency or retirement program for those services, and because Claimant has received a benefit from ASRS due to Claimant's receipt of both her own as well as and her Arizona employer's contributions to Claimant's former ASRS account, Claimant is not eligible to purchase her out-of-state service accrued while working in Arizona.

Therefore, based upon the foregoing findings of fact, conclusions of law, and discussion, the following recommendation denying Claimant's appeal shall issue:

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

**IN RE: Account of Jill H. Kaszubowski,
 Claim of Jill H. Kaszubowski**

Docket No. 2022-18

RECOMMENDATION

AND NOW, this **2nd** day of **December 2024**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the Hearing Officer for the Public School Employees' Retirement Board ("Board") recommends that the Board **DENY CLAIMANT'S APPEAL** of the determination made by the Public School Employees' Retirement System Executive Staff Review Committee that Claimant is ineligible to purchase her out-of-state service reflecting her time of employment in Arizona.

NOTICE

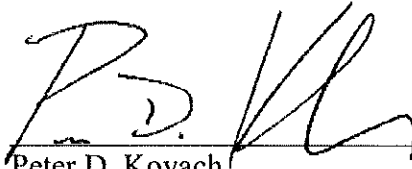
A party may file exceptions to this proposed opinion and recommendation in accordance with 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions). *See* 22 Pa. Code § 201.11(d). **Exceptions shall be filed** with the below-noted Appeal Docket Administrator and must be received within thirty (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 Board will rule upon the exceptions. The Board may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its

own opinion and order, whether or not exceptions to the proposed opinion and recommendation are filed by any party. *See* 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.

BY ORDER:


Peter D. Kovach
Hearing Examiner

For Claimant:

Brian P. Litzinger, Esquire
1397 Eisenhower Blvd
Richland Square III, Ste 202
Johnstown, PA 15904-3267

For the Retirement System:

Cayla B. Jakubowitz, Esquire
Pennsylvania Public School Employees'
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5 N 5th St
Harrisburg, PA 17101

Appeal Docket Administrator:

Caryn Richard, Appeal Docket
Administrator
Pennsylvania Public School Employees'
Retirement System
Office of Chief Counsel
5 N 5th Street
Harrisburg, PA 17101-1905

Date of Mailing:

December 3, 2024

Mail Date: _____

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

IN RE: ACCOUNT OF JILL H. KASZUBOWSKI
DOCKET NO. 2022-18
CLAIM OF JILL H. KASZUBOWSKI

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner ("HEO"). We note that neither party filed exceptions to the HEO. The Board finds appropriate the proposed Opinion and Recommendation and, accordingly, we hereby adopt it as our own.

IT IS HEREBY ORDERED that Claimant's request to purchase service credit with PSERS for time worked in Arizona is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: _____

By: _____
Richard Vague, Chairman