PSERB Resolution 2026-38
Re: Account of Baker, M., Docket No. 2023-09
August 13, 2026

RESOLVED, that, in the matter of Michelle R. Baker, Docket No. 2023-09, the Public School Employees' Retirement Board accepts the recommendation of the Benefits and Appeals Committee and adopts the proposed Opinion and Order of the Board and dismisses the Claimant's appeal with prejudice.

Mail Date: ________________________

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF MICHELLE R. BAKER
DOCKET NO. 2023-09
CLAIM OF MICHELLE R. BAKER :

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"), Michelle R. Baker's ("Claimant") Legal Brief in Support of Appeal ("Claimant's Br."), and the Public School Employees' Retirement System's ("PSERS") Brief to the Hearing Examiner. Neither party filed exceptions to the HEO, evidencing that they are not appealing the HEO and they are waiving any objections to the HEO. *See* 1 Pa. Code §§ 35.211, 35.213. After careful review of the entire record, the Board agrees with the Hearing Examiner that Claimant's appeal should be denied and adopts the HEO with the following additional analysis.[1]

Claimant primarily challenges the timing of PSERS' communications regarding the error in her *Application for Retirement*. The record reflects, however, that Claimant received PSERS' notifications with sufficient time to respond. Indeed, PSERS first informed Claimant of errors with her application in a letter dated January 23, 2023, advising her that it needed a rollover form and a correct direct deposit number. (Finding of Fact ("F.F.") 30 (citing PSERS-6)). PSERS received the requested rollover form on February 6, 2023. (F.F. 31 (citing N.T. 108)). By letters dated February 8, 2023, and February 14, 2023, PSERS reminded Claimant that it still needed correct direct deposit information, and PSERS warned her that the information had to be submitted within 90

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[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).

days of her termination date. (F.F. 32 (citing PSERS-8; N.T. 108-109); F.F. 34 (citing PSERS-10; N.T. 111-112). By letter dated March 16, 2023, PSERS again reminded Claimant it needed information. (F.F. 35 (citing PSERS-11; N.T. 113-114)). By letter dated April 15, 2023, PSERS warned Claimant that, if she did not respond in 30 days, it would presume she does not wish to pursue the matter and would "withdraw" her retirement application. (F.F. 36 (citing PSERS-12; N.T. 114-115)). Claimant did not respond within 30 days. The record reflects, however, that Claimant received notice of the error by May 31, 2023, at the latest, which was before her 90-day deadline of June 15, 2023, because her financial advisor attempted to fax the information to PSERS. (F.F. 37 (citing 65-66; PSERS-13)). The fax, however, was unsuccessful; in fact, her financial advisor received a send result report that indicated that an error with the fax had occurred. (*See id*; F.F. 38 (citing N.T. 116)).

Claimant also alleges that PSERS' delay in responding to an exchange of emails that began on May 30, 2023, caused her to submit the information after the 90-day deadline (Claimant's Br. at IV), but an answer to her email inquiry was provided on June 12, 2023, and notice of the missing information also was available to her in her Member Self-Service ("MSS") account, at all relevant times, through the MSS status tracker. (*See* F.F. 5 (citing N.T. 87); F.F. 26 (citing N.T. 102-103); F.F. 27 (citing N.T. 121)). Accordingly, the Board finds that Claimant was timely notified that her *Application for Retirement* was incomplete, and PSERS' actions did not cause an untimely submission.

Claimant requests that this Board grant her relief because she attempted to comply with PSERS' requests on time. (Claimant's Br. at VII, VIII.). The law, however, requires actual receipt of documentation. *See* 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."). Claimant challenges PSERS' calculation of the 90 days for receipt, as set forth in the Public School Employees' Retirement Code's definition of "effective date of retirement," 24 Pa.C.S. § 8102, asserting that it is unclear whether the 90 days is calendar days or business days. (*See* Claimant's Br. at VI.) This Board, however, has adopted Section 31.12 of the General Rules of Administrative Practice and Procedure, which provides, in pertinent part, that in computing a period of time prescribed or allowed by an agency's regulations or another provision of law, an agency uses calendar days. *See* 1 Pa. Code § 31.12; 22 Pa. Code § 201.1. For computation, the day of the act, event, or default is not included, and holidays and weekend days are not included *if* the holiday or weekend day is the *last day* of the period to be computed. 1 Pa. Code § 31.12; *see* 1 Pa.C.S. § 1908.

Finally, although not determinative to the outcome, this Board notes that Claimant's monthly benefit payment would be permanently reduced, if this Board were to grant her the relief she requests in this appeal. (F.F. 48 (citing N.T. 98-100, 128, 138)).

With the above additional analysis, and under the factual circumstances presented herein, we hereby adopt the HEO as our own, and accordingly:

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

PUBLIC SCHOOL EMPLOYEES
RETIREMENT BOARD

Dated: ______________________________ By: ______________________________
Richard Vague, Chairman

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE:	:	
	:	
ACCOUNT OF MICHELLE R. BAKER	:	**DOCKET NO. 2023-09**
CLAIM OF MICHELLE R. BAKER	:	

PROPOSED OPINION AND RECOMMENDATION

Michael T. Foerster
Hearing Officer

GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE
OFFICE OF HEARING EXAMINERS
P.O. BOX 2649
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HISTORY

This matter presents to the Public School Employees' Retirement Board ("Board") on an appeal filed by Michelle R. Baker ("Claimant") on November 29, 2023. Claimant appealed from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS"), dated October 30, 2023 ("ESRC denial letter"). That decision denied Claimant's request to change the effective date of her retirement to June 15, 2023, discussed more fully below. PSERS' Docket Clerk acknowledged the appeal by letter dated December 6, 2023. PSERS answered the appeal via submittal dated December 15, 2023.

On March 19, 2025, the Secretary to the Public School Employees' Retirement Board ("PSERB") appointed the undersigned to act as hearing officer for the dispute. The docket clerk issued a Notice of Hearing that same day. She set the hearing for October 29, 2025.

The hearing occurred as scheduled. Claimant appeared without counsel and represented herself. Dwight A. Decker, Jr., Esquire represented PSERS. The parties presented testimony and documentary evidence. At the close of the hearing, PSERS requested post-hearing briefs. The court reporter filed the transcript on December 5, 2025. On December 10, 2025, the undersigned issued a briefing Order. Ms. Baker's brief was due January 9, 2026; however, she did not file. PSERS filed a timely brief. Claimant did not file a reply brief. The record is now closed, and the matter is ripe for adjudication.

FINDINGS OF FACT

1. At all relevant times, Claimant was a member of PSERS. (Notes of Testimony ("N.T.") *passim*).

2. Claimant was first enrolled in PSERS when she started working for West York Area School District in November of 1990. (N.T. 44).

3. Claimant's last day of active work was with the Central York School District on March 17, 2023. (N.T. 44).

4. In October 2021, Claimant signed up for a PSERS Member Self Service ("MSS") account and provided PSERS with her email address. (N.T. 47).

5. MSS is an online portal where PSERS members can access documents, update contact information, track processes, and update beneficiaries. (N.T. 87).

6. By signing up for MSS, Claimant was enrolled in paperless delivery for her PSERS documents. (N.T. 88).

7. Claimant may opt out of paperless delivery at any time for no cost. (N.T. 88).

8. In September 2022, PSERS mailed and emailed a letter to all PSERS members signed up for paperless delivery, including Claimant, reminding those members that they were enrolled in paperless delivery of PSERS documents. (N.T. 45-46, 93-95; PSERS-1).

9. The September 2022 letter provided the following reminders regarding members' MSS accounts and paperless delivery:

> 1) You were automatically enrolled into paperless delivery of information from PSERS.
>
> 2) Nearly all communication from PSERS will be delivered electronically into your MSS account, and you will receive an email notifying you when a document is available in the "My Documents" page in your account.

3) The email addresses that the communication from PSERS will come from are

a. RA-PSERS_Alert@pa.gov

b. RA-PSV3_Email@pa.gov

c. RA-PSERSNEWS@pa.gov

4) You should add the above email addresses to your contacts to ensure that communication from PSERS does not go into your Spam or Junk folder. For instructions on adding email addresses to your contacts visit *psers.pa.gov,* and under the Member Login (MSS), visit the MSS Troubleshooting section.

5) Check your email. Including your Spam and Junk folders to ensure important correspondence from PSERS is not missed, even if you added the above email addresses to your contacts.

6) It is important to keep your email address up to date with PSERS. Remember, if you use an employer-provided email address, when you separate from your employer, you will not have access to that email anymore.

7) To remain with paperless delivery, you do not need to do anything. If you wish to change your communication preferences with PSERS, you can do so by logging into your MSS account and changing your paperless delivery option on the Profile page, or you can send a signed letter to PSERS.

8) Note that there are a few documents that PSERS cannot deliver electronically, so it is essential for PSERS to have a valid mailing address on file for you even though you have paperless delivery.

9) PSERS will never send you emails asking for your password or personally identifiable information (e.g., social security number, birth date, etc.).

10) To ensure you receive the 10 important reminders in this letter, the letter has been sent to you through an email and via paper through the U.S. mail. If you do not receive this letter through an email, you should check your Spam and Junk folders, log into your MSS account to update your email address or contact PSERS.

(PSERS-1).

10. When a document is posted to a member's MSS account, an email is sent to

the member's email notifying them that a document is available to view. (N.T. 95).

11. PSERS tracks whether MSS email notifications are returned as undeliverable and follows-up by mailed letter if it happens. (N.T. 96).

12. None of Claimant's email notifications were returned to PSERS as undeliverable. (N.T. 96).

13. Claimant never opted out of paperless delivery and continues to receive documents from PSERS electronically. (N.T. 76).

14. Claimant has maintained the same email address since creating her MSS account, but she is not in the habit of checking her emails. (N.T. 35-36, 47, 55, 95).

15. On October 19, 2022, Claimant completed a *Request for Retirement Estimate* with her financial advisor, John Myers, who then faxed the document to PSERS. (N.T. 48-49, 54; PSERS-2).

16. John Myers is a retired teacher and family friend of Claimant; he does not work for PSERS. (N.T. 48, 51-52, 98).

17. Claimant retired early to take care of her pregnant single daughter and relied on John Myers during her retirement process. (N.T. 36; 51-52; 145)

18. In response to Claimant's *Request for Retirement Estimate,* PSERS prepared an *Early Retirement Estimate* that it provided to Claimant by posting to her MSS account on November 3, 2022. (N.T. 98; PSERS-3).

19. Claimant retrieved her *Early Retirement Estimate* from MSS with John Myers. (N.T. 49-52; PSERS-3; PSERS-18).

20. Claimant's estimate was an early retirement estimate because she did not meet the requirement for an unreduced retirement, meaning reducing factors were incorporated into the

estimate. (N.T. 98-100, 127-28).

21. John Myers provided Claimant with a blank *Application for Retirement* that Claimant and John Myers filled out together before John Myers mailed it to PSERS. (N.T. 52-54, 100-101; PSERS-4).

22. The *Application for Retirement* that John Myers provided to Claimant was an outdated form that was no longer used or provided by PSERS at that time. (N.T. 101; PSERS-4).

23. Claimant did not attend exit counseling provided by PSERS. (N.T. 51-52, 56, 102).

24. PSERS received *Claimant's Application for Retirement* on January 6, 2023. (N.T. 100; PSERS-4).

25. PSERS reviewed Claimant's *Application for Retirement* and identified multiple errors on the application. (N.T. 102).

26. When Claimant's *Application for Retirement* was received by PSERS, a new tab within MSS called "My Retirement Application" was populated, which acts as a status tracker letting Claimant know the status of her application. (N.T. 102-103).

27. While PSERS was waiting for information from Claimant, the MSS "My Retirement Application" tracker indicated that PSERS was waiting for information from Claimant. (N.T. 121).

28. PSERS notified Claimant of the errors on her *Application for Retirement* by two separate letters dated January 23, 2023. (PSERS-5; PSERS-6; 104).

29. PSERS-5 notified Claimant that there was an error on her application in Section 6 regarding her Federal Income Tax withholding selection due to changes in withholding tables and that if she did not update that section, PSERS would use the default "single with no

adjustments" withholding until a new form is submitted. (PSERS-5).

30. PSERS-6 notified Claimant that PSERS could not process her application because it did not receive her *Authorization for Direct Rollover* form and that an incorrect routing number was provided in Section 10 of her *Application/or Retirement.* (PSERS-6).

31. On February 6, 2023, PSERS received Claimant's *Authorization for Direct Rollover* form but did not receive an updated routing number. (N.T. 108).

32. By letter dated February 8, 2023, PSERS again notified Claimant that it needed a corrected routing number from Claimant to process her application:

> In **Section 10 - Direct Deposit/Electronic Transfer,** PSERS requires that any withdrawal of benefits be paid directly to you through direct deposit. The ***Routing Number*** you provided does not exist for the financial institution given. Please verify the *Routing Number* with your financial institution through which you have chosen to receive your retirement benefits and please re-submit this section with the correct *Routing Number* and *Depositor Account Number* in their appropriate boxes, then return to PSERS for processing.
>
> In order for the day after termination to be assigned as your retirement date, your forms must be received no later than 90 days following your termination date.

(PSERS-8 (emphasis in original); N.T. 108-109).

33. On February 10, 2023, PSERS received an updated Section 6 of Claimant's application regarding her Federal Income Tax withholding selection, which was the error discussed inPSERS-5. (PSERS-9; N.T. 110-11).

34. By letter dated February 14, 2023, PSERS reminded Claimant that it needed a corrected routing number from Claimant to process her application:

> In **Section 10 - Direct Deposit/Electronic Transfer,** PSERS requires that any withdrawal of benefits be paid directly to you through direct deposit. The ***Routing Number*** you provided does not exist for the financial institution given. Please verify the *Routing Number* with your financial institution through which you have

> chosen to receive your retirement benefits and please re-submit this section with the correct *Routing Number* and *Depositor Account Number* in their appropriate boxes, then return to PSERS for processing.
>
> In order for the day after termination to be assigned as your retirement date, your forms must be received no later than 90 days following your termination date.

(PSERS-10 (emphasis in original); N.T. 111-12).

35. By letter dated March 16, 2023, PSERS reminded Claimant that information was still needed from her to complete the processing of her retirement application:

> The Public School Employees' Retirement System (PSERS) requested information from you on February 14, 2023 to complete the processing of your retirement application. To date, we have not received a response, and therefore, cannot complete the processing of your retirement benefit until this information is received.

(PSERS-11; N.T. 113-14).

36. By letter dated April 15, 2023, PSERS again reminded Claimant that it needed information from her and indicated that "If [PSERS does] not hear from you within 30 days of the date of this letter, we will presume that you do not wish to pursue *this* matter any further and PSERS will withdraw you *Application/or Retirement* (PSRS-8)." (PSERS-12; N.T. 114-15).

37. On May 31, 2023, John Myers attempted to fax Claimant's corrected routing number to PSERS but the fax did not go through and John Myers received a send result report from his fax machine indicating an error occurred. (N.T. 65-66; PSERS-13).

38. PSERS did not receive any faxes from John Myers on May 30 or 31, 2023. (N.T. 116).

39. Claimant did not call PSERS to confirm receipt of any information from May 31, 2023 through June 22, 2023. (N.T. 117-18).

40. Between May 30, 2023 and June 22, 2023, Claimant exchanged emails with

PSERS related to correcting her retirement application, including PSERS providing Claimant with an electronic copy of a retirement application on May 30, 2023 and emails from PSERS on June 12, 2023 and June 20, 2023 indicating that PSERS was still waiting for information from Claimant. (PSERS-16; PSERS-19).

41. On June 22, 2023, PSERS first received Claimant's corrected Section 10, which provided a corrected routing number for her financial institution. (N.T. 116; PSERS-14).

42. John Myers later mailed the send result report to PSERS to show that he attempted to fax Claimant's updated routing number. (N.T. 66; PSERS-13).

43. PSERS received the send result report in the mail on July 27, 2023. (PSERS-13; N.T. 115-16).

44. Upon receiving Claimant's corrected Section 10 on June 22, 2023, PSERS completed processing Claimant's application and finalized her retirement benefit. (N.T. 68-69, 117; PSERS-15).

45. By letter dated July 8, 2023, PSERS notified Claimant of the details of her retirement benefit, including that her effective retirement date was June 22, 2023. (PSERS-15; N.T. 68-69, 117).

46. PSERS provided Claimant with all the error letters regarding her *Application for Retirement* by posting the letters to her MSS account and notifying her at the email address she provided to PSERS. (N.T. 104, 109, 112, 113-115, PSERS-5; PSERS-6; PSERS-8; PSERS-10; PSERS-11; PSERS-12).

47. Claimant maintained the same email address on file with PSERS from the time she signed up for MSS through the date of her hearing, which is the same email she used to email PSERS in May and June of 2023. (N.T. 55, 95-96, 121; PSERS-16; PSERS-19).

48. Claimant collects more in monthly benefits based on her retirement date in June 2023 than she would have received if her retirement were effective in March 2023 because Claimant retired early. (N.T. 98-100, 128, 138).

DUE PROCESS

49. After receiving the July 8, 2023, finalized retirement benefit letter, Claimant filed an appeal with PSERS' Executive Staff Review Committee ("ESRC") regarding her effective date of retirement. (N.T. 69-70).

50. By letter dated October 30, 2023, the ESRC denied Claimant's appeal, explaining that an *Application for Retirement* must be filed within 90 days of termination of service to receive retroactive benefits. (N.T. 70; PSERS-17).

51. After receiving the October 30, 2023 letter, Claimant filed an *Appeal and Request for Administrative Hearing* addressing the effective date of her retirement, and the hearing was held on October 29, 2025 before the undersigned.

52. Claimant appeared *pro se* and had the opportunity to testify, examine witnesses, and offer evidence. N.T. *passim*; Docket.

CONCLUSIONS OF LAW

1. PSERS is a creation 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.

2. Claimant has only those rights recognized by statute and none beyond. *See Forman v. Pub. Sch Emps.' Ret. Bd.*,778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Bittenbender v. State Emps.' Ret. Bd.*, 622 A.2d 403,405 (Pa. Cmwlth. 1992).

3. Claimant bears the burden of establishing those facts upon which she relies to prevail. *See* 22 Pa. Code§§ 201.12(d), 201.10, and201.8(a); *Gierschickv. State Emps.' Ref. 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. 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.

6. "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.

7. 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).

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 had notice of all documents posted to her MSS account. Finding of Fact ("F.F.") 19, 26-36, 46; PSERS-1; *see also* 24 Pa.C.S. § 8103.1.

10. Claimant did not satisfy her burden of proof that PSERS received a proper *Application for Retirement* from her to retain May 18, 2023 as her effective date of retirement. F.F. 24-38, 41.

11. Claimant elected to vest her retirement rights because she did not submit a corrected Section 10 with a correct routing number to PSERS by June 15, 2023. *See* 24 Pa.C.S. §§ 8507(f), (i); 22 Pa. Code§ 215.7(e); *see also* PSERS-14; F.F. 41.

12. Pursuant to the Retirement Code, Claimant's effective date of retirement is June 22, 2023, the date PSERS received her properly completed *Application for Retirement. See* 24 Pa.C.S. §§ 8102; 8507(i); PSERS-14; PSERS-15; F.F. 41, 44-45.

13. Claimant receives the retirement benefit that she is entitled to according to her benefit selections and the calculations set forth in the Retirement Code. *See* 24 Pa.C.S. §§ 8342, 8345; PSERS-4; PSERS-6, PSERS-9, PSERS-14; PSERS-15; F.F. 63-68, 44-45, 48.

14. The Public School Employees' Retirement Board ("Board") has no authority to grant rights to members beyond those specifically set forth in the Retirement Code; and is, therefore, prohibited from deeming Claimant's effective date of retirement as March 18, 2023. *Forman,* 778 A.2d at 780; *see also Allen v. Pub. Sch. Emps.' Ret. Bd,* 848 A.2d 1031, 1033-34 (Pa.

Cmwlth. 2004); *Marinucci v. State Emps.' Ret. Sys.*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004).

DISCUSSION

The issue presenting is whether a member can retroactively change her date of effective date of retirement. For the reasons stated below, she cannot.

In this matter, Claimant filed an Application for Retirement on January 6, 2023. F.F. 24. On January 23, 2023, PSERS notified Claimant of the deficiencies in the Application. F.F. 28. Claimant terminated her employment on March 17, 2023. F.F. 3. PSERS requested the information again on April 15, 2023. F.F. 36. Claimant's representative later tried to fax information to PSERS. F.F. 37. PSERS received all the necessary information on June 22, 2023. F.F. 41. This completed the *Application for Retirement*. F.F. 44; Conclusions of Law 11, 12. However, that was beyond the statutory 90-day deadline to allow for a retroactive filing date of her application.

It is well established that Claimant bears the burden of establishing the facts necessary to sustain her claim. *See Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *see also Wingert v. State Employes' Ret. Bd.*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). Further, it is well established that the 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, 779 (Pa. Cmwlth. 2011).

Under the Retirement Code, a PSERS member can have his or her application effectively be considered filed retroactively. A member who desires to have his or her effective date of retirement be the day following the date of termination of service; that member 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. In other words, the General Assembly provided members ninety days, following the date of termination, to file a complete application for an immediate retirement benefit. By default, when PSERS receives an application for retirement beyond 90 days from the date of termination of service or beyond the date specified in the application, the member's effective date of retirement becomes the date of PSERS' receipt of such application. *Id.* Therefore, failure of a member to ensure that PSERS receives his or her application for retirement within 90 days - from the date of termination of service or on the date specified on the application - 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; *see also e.g., Account of Ruth A. Landry*, Docket No. 2009-07 (PSERB August 17, 2010).

Pursuant to the Retirement Code, upon termination of service, a member may elect to withdraw her accumulated deductions, vest their retirement rights, or receive an immediate annuity. *See* 24 Pa.C.S. § 8507(f); 22 Pa. Code§ 215.7(e). 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 March 17, 2023. 24 Pa.C.S. § 8102; F.F. 3. A member may also elect to vest his or her retirements rights. See Brief for the System at 12. Pursuant to Section 8507(i) of the Retirement Code, a member will be deemed have elected to vest, and her annuity will become effective upon filing *Application for Retirement* upon the date of filing that application. 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,[1] summarized above and fully stated in the *Findings*, Claimant failed to provide a complete application within that 90-statutory deadline. Therefore, she cannot now effect changes to her benefit.

The System's attorney dedicates a section of his brief to the concept of equity; he correctly argues that equity does not apply. The Board does not possess equitable powers. *See generally*, *Forman supra*, at 780 (Board does not have the authority to reopen a legislatively crafted window and circumvent the express language of the Retirement Code); *Tyson* v. *Pub. Sch. Emps.' Ret. Sys.*, 737 A.2d 325, 328-29 (Pa. Cmwlth. 1999)(Board cannot be estopped from applying the statutory provisions on the Retirement Code); *Bittenbender*, 622 A.2d at 405 (PSERS has no authority to grant rights beyond those specifically set forth in the Retirement

[1] 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).

Code); *see also Cosgrove v. State Emps.' Ret. Bd.*, 665 A.2d 870 (Pa. Cmwlth. 1995). Given the clarity of the statutory framework one would be hard pressed to make a good argument for equity (if the concept applied).

The record establishes conclusively that Claimant signed up for and received PSERS communications. F.F. 4-14. She could have opted out of e-delivery, but never did. F.F. 7, 13. It bears noting that when a document is posted to a member's MSS account, an email is sent to the member's email address notifying them that a document is available to view. F.F. 10. PSERS repeatedly reminded Claimant, via the medium she requested, that there were deficiencies. F.F. 26-30, 32, 34-36.

Based on the above, the facts of record support the conclusion that Claimant did not file a completed *Application for Retirement* within the 90-day deadline. Therefore, her date of retirement cannot now be made retroactive. The Code does not authorize the Board to provide any remedy that would allow the Board to find that Claimant timely filed an *Application for Retirement* when, in fact, she did not do so. Based upon the foregoing, the undersigned makes the following recommendation:

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE:	:	
	:	
ACCOUNT OF MICHELLE R. BAKER	:	**DOCKET NO. 2023-09**
CLAIM OF MICHELLE R. BAKER	:	

RECOMMENDATION

AND NOW, this 27th day of March, 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 June 22, 2023, to March 18, 2023.

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 July __, 2025, 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.

M Foerster

Michael T. Foerster
Hearing Officer

Claimant:	Michelle R. Baker [redacted]
For PSERS:	Dwight R. Decker, Jr., Counsel Public School Employees' Retirement System 5 North 5th Street Harrisburg, PA 17101
Docket Clerk:	Candice Davila Dorsey, Appeal Docket Administrator Public School Employees' Retirement Board 5 N 5th Street Harrisburg, PA 17101-1905
Date of mailing:	3/30/26