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

IN RE: ACCOUNT OF REGINA G. MARSILIO
DOCKET NO. 2007-18
CLAIM OF REGINA G. MARSILIO

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Pre-hearing Orders; and the Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the Opinion and Recommendation of the Hearing Examiner. The Board finds appropriate the Procedural Background, Discussion, and Recommendation in the Proposed Adjudication. Accordingly, we hereby adopt the Hearing Examiner's Opinion and Recommendation as our own.

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

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: _____

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

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

IN RE:

Account of Regina G. Marsilio
Claim of Regina G. Marsilio

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Docket No. 2007-18

OPINION AND RECOMMENDATION

Date of Hearing: October 15, 2008
Hearing Officer: Jackie Wiest Lutz, Esquire
For the Claimant: Regina G. Marsilio, *pro se* (not present)
For PSERS: David W. Speck, Esquire

Procedural Background:

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by Regina G. Marsilio (Claimant) from a decision of the Executive Staff Review Committee of the Public School Employees' Retirement System (PSERS), which denied Claimant's request to purchase credit for previously refunded service.

Claimant's appeal was filed on July 24, 2007. On November 7, 2007, a hearing notice was issued scheduling a hearing on Claimant's appeal for March 19, 2008, commencing at 1:00 p.m. at PSERS, 5 North Fifth Street, Harrisburg, PA 17101.

By letter dated January 8, 2008, Claimant requested a 120 business-day postponement of her hearing due to "unavailability of legal counsel." (HO Exhibits 2 and 3) Claimant's request was unopposed. An Order was subsequently issued by the Hearing Officer on January 23, 2008, which granted Claimant's request and re-scheduled Claimant's hearing for August 20, 2008. (HO Exhibit 4)

On May 6, 2008, David W. Speck, Esquire, on behalf of PSERS, requested a continuance of the August 20, 2008 hearing. (HO Exhibit 5) An Order Granting Continuance and Re-scheduling Hearing was issued by the Hearing Officer on May 19, 2008. Claimant's hearing was re-scheduled at that time for October 15, 2008, commencing at 1:00 p.m. at PSERS. (HO Exhibit 6)

On October 6, 2008, the Hearing Officer received a second request on behalf of Claimant for an "indefinite postponement" of her hearing. (HO Exhibit 7) One reason provided by the Claimant for her unavailability on October 15, 2008 was "travel plans;" another reason provided by the Claimant was that her attorney, who is licensed to practice law in New York and New Jersey, has not yet been examined for admission to

the Pennsylvania bar. (HO Exhibit 7) Attorney Speck, on behalf of PSERS opposed this request.

By Order dated October 9, 2008, the Hearing Officer denied Claimant's request for an indefinite postponement of her hearing, noting, in part, "this is Claimant's 2nd request for a lengthy continuance of a hearing which has been re-scheduled since May 19, 2008." (HO Exhibit 9) The Order was served upon Claimant by regular and overnight mail, and specifically notified Claimant that the hearing will proceed as scheduled on October 15, 2008 at 1:00 p.m. at PSERS. (HO Exhibit 9; PSERS' Exhibits 3 and 4)

On October 15, 2008, the hearing on Claimant's appeal was held as scheduled in the fifth floor conference room of PSERS. David W. Speck, Esquire, was present at the hearing on behalf of PSERS; Claimant did not appear for her scheduled hearing.

Discussion:

At the commencement of the hearing, Attorney Speck moved to dismiss Claimant's appeal without considering the merits of her claim under the authority of 22 Pa. Code §201.8 for Claimant's failure 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 §201.9.

Under the authority of section 201.8, the Hearing Officer makes this recommendation to dismiss Claimant's appeal without considering the merits of Claimant's claim because it is the Hearing Officer's opinion that Claimant failed to appear for her scheduled hearing without good cause.

As the procedural history reveals, the hearing on Claimant's appeal was first scheduled to occur on March 19, 2008. However, Claimant requested and was granted a "120 business-day postponement" of that hearing to allow Claimant time to obtain legal counsel. The hearing on Claimant's appeal has been re-scheduled since *May 19, 2008*.

As the record reflects, just five business days prior to Claimant's re-scheduled hearing,¹ the Hearing Officer received, but, denied, Claimant's second request for a continuance. In this request, Claimant requested an "indefinite postponement" of her hearing. Claimant listed two reasons: (1) travel plans; (2) unavailability of her attorney. Neither of Claimant's stated reasons excuse her failure to appear for her scheduled hearing.

The record confirms that Claimant has known for five months that her hearing was scheduled for October 15, 2008. Thus, to schedule travel plans which conflict with her hearing date and then wait until the week prior to her hearing to request a continuance of that hearing is not *good cause* to justify Claimant's failure to appear. Second, although Claimant makes reference to an *attorney* in her request for an indefinite postponement, at no time has an *attorney* (licensed to practice law in Pennsylvania or elsewhere) entered his/her appearance or communicated with PSERS or the Hearing Officer to confirm that he/she had been retained to represent Claimant

¹ Monday, October 13, 2008 was a holiday.

in Claimant's appeal. Thus, there is nothing filed of record to substantiate Claimant's representation.

Claimant was notified by the Hearing Officer that her hearing would proceed as scheduled on October 15, 2008. Claimant opted not to appear for her hearing.

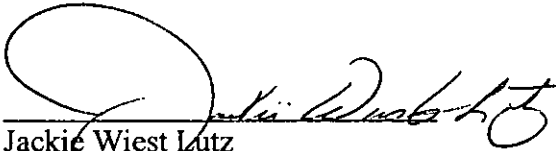
Under these circumstances, it is recommended that the Board grant PSERS' request to dismiss Claimant's appeal under the authority of 22 Pa. Code §201.8 for Claimant's failure to appear for her scheduled hearing without good cause. The following recommendation is made:

COMMONWEALTH OF PENNSYLVANIA
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RECOMMENDATION

AND NOW, this 31st day of October, 2008, the Hearing Officer for the Public School Employees' Retirement System recommends that the appeal filed by Regina G. Marsilio be **DISMISSED**, with prejudice, under the authority of 22 Pa. Code §201.8, due to Claimant's failure, without good cause, to appear for her scheduled hearing.



Jackie Wiest Lutz
Hearing Officer

Date of Mailing: October 31, 2008