



## **PSERB Resolution 2024-33**

**Re: Account of Zilinkas, Docket No. 2021-01**

**May 31, 2024**

**RESOLVED**, that in the matter of Mark J. Zilinkas, Docket No. 2021-01, the Public School Employees' Retirement Board (the "Board") accepts the recommendation of the Benefits and Appeals Committee and adopts the attached Opinion and Order of the Board and dismisses Claimant's appeal with prejudice.

Mail Date: \_\_\_\_\_

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

IN RE: ACCOUNT OF MARK J. ZILINSKAS  
DOCKET NO. 2021-01  
CLAIM OF MARK J. ZILINSKAS

**OPINION AND ORDER OF THE BOARD**

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal, requesting that Mark J. Zilinskas's ("Claimant") appeal be dismissed because there is no issue of material fact, and PSERS is entitled to summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on April 4, 2023, and served a copy by First Class Mail on Claimant as is required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35, and 33.36. By letter that same day, April 4, 2023, PSERS notified Claimant that he had thirty days to respond to PSERS' Motion under Pa.R.C.P. No. 1035.3. Claimant's response, therefore, had to be filed on or before May 4, 2023. See 1 Pa. Code §§ 31.11, 31.12, and 33.34. Claimant did not file a response to the Motion.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. The function of a summary judgment motion is to eliminate the needless use of time and resources of the litigants and the Board in cases where an evidentiary administrative hearing would be a useless formality. See *Liles v. Balmer*, 567 A.2d 691 (Pa. Super. 1989). The Board's regulations authorize the use of summary judgment where there are no genuine issues of material fact. 22 Pa. Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the non-moving party and give him the benefit of all reasonable inferences. See *Thompson*

*v. Nason Hosp.*, 535 A.2d 1177, 1178 (Pa. Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991). Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa. Cmwlth. 1984). “Summary judgment may be entered against a party who does not respond.” Pa.R.C.P. No. 1035.3(b).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying “(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.” Pa.R.C.P. No. 1035.3(a). “An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.” Pa.R.C.P. No. 1035.3(b).

Because Claimant did not respond to PSERS’ Motion and, therefore, has not identified any facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter, the Board finds that there are no disputed material facts. The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimant is permitted to purchase service credit with PSERS for time worked at a private university.

## **FINDINGS OF FACT**

Based on the record, the Board finds the following relevant facts not in dispute:

1. In 1990, Claimant became a PSERS member by virtue of his employment with the Indiana Area School District (“District”). (PSERS’ Memorandum of Facts, ¶ 1).
2. Between October 2019 and April 2020, PSERS received several *Purchase of Out-of-State Service* forms, and a general request, through which Claimant requested to purchase prior service rendered during the 1989-1990 school year at Muskingum

University (formerly Muskingum College), a private university in Ohio.<sup>1</sup> (PSERS-1, -3, -4, -6; PSERS' Memorandum of Facts, ¶¶ 2, 9, 12, 14, 16).

3. PSERS created and maintains a *Purchase of Out-of-State Service* form (PSRS-278 (5/2014)), which requires completion and certification by the member, out-of-state employer, and out-of-state retirement system, to provide PSERS with necessary information to determine the eligibility of a member to purchase credit for out-of-state service. (PSERS-1; PSERS' Memorandum of Facts, ¶¶ 3, 4).

4. By letters dated November 13, 2019, April 13, 2020, and May 7, 2020, PSERS informed Claimant that his purchase request could not be processed because the submitted forms were incomplete, and PSERS noted that when it receives a complete form, it will then review the request to determine eligibility. (PSERS-2, -5, -7; PSERS' Memorandum of Facts, ¶¶ 8, 15, 18).

5. PSERS never received a completed form certified by Claimant's out-of-state employer. (PSERS-1, -3, -6; PSERS' Memorandum of Facts, ¶¶ 2, 5-6, 9-10, 16-17).

6. On June 10, 2020, Claimant terminated employment. (PSERS' Memorandum of Facts, ¶ 19).

7. Claimant is now receiving a monthly annuity as a retired member of PSERS. (PSERS' Memorandum of Facts, ¶ 20).

8. On June 22, 2020, through an appeal to the PSERS Executive Staff Review Committee ("ESRC"), Claimant requested that PSERS allow him to purchase credit for the service he rendered at Muskingum University without a completed form. (PSERS-8; PSERS' Memorandum of Facts, ¶ 21).

9. In Claimant's December 23, 2019 and April 27, 2020 submissions of incomplete *Purchase of Out-of-State Service* forms, there is a hand-written note certified by the State Teachers Retirement System of Ohio ("STRS") that "Muskingum

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<sup>1</sup> To the extent service rendered with Columbus City Schools is referenced in the pleadings and attachments, this prior service with an out-of-state public school is not the subject of this appeal, and therefore, is not addressed in this Order.

College is private, so [Claimant] did not contribute to STRS.” (PSERS-3 (Section E); PSERS-6 (Section E); PSERS’ Memorandum of Facts, ¶¶ 11, 13, 17).

10. Muskingum is a private university in Ohio. (PSERS-3; PSERS’ Memorandum of Facts, ¶ 12).

11. By letter dated December 28, 2020, the ESRC denied Claimant’s appeal because service with a private university is not eligible for a purchase with PSERS. (PSERS-9; PSERS’ Memorandum of Facts, ¶ 22).

12. On January 21, 2021, Claimant filed an *Appeal and Request for Administrative Hearing*. (PSERS-10; PSERS’ Memorandum of Facts, ¶ 23).

13. On January 28, 2021, PSERS filed an Answer. (PSERS-11; PSERS’ Memorandum of Facts, ¶ 24).

14. On April 4, 2023, PSERS filed a Motion for Summary Judgment.

15. Claimant did not file a response to PSERS’ Motion.

16. The matter is ripe for Board adjudication.

## DISCUSSION

PSERS administers the retirement system for Pennsylvania public school employees. See 24 Pa.C.S. § 8101 et seq. PSERS is a creature of the Legislature and its members have only those rights created by the Public School Employees’ Retirement Code (“Retirement Code”), 24 Pa.C.S. § 8101 et seq., and none beyond. *Forman v. Pub. Sch. Emps.’ Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001). Members earn service credit with PSERS through working for Pennsylvania public schools, earning one year of credit for each year worked for full-time employees, and a fractional portion of credit for part-time employees. See 24 Pa.C.S. §§ 8302, 8102 (defs. “school service” and “school employee”). Service credit with PSERS is a critical component in calculating a PSERS member’s monthly annuity at retirement and is necessary to meet certain eligibility thresholds. 24 Pa.C.S. § 8342. Active members of PSERS may

purchase credit for previous Pennsylvania “school service,” which, through definitions, is limited to work in public entities. 24 Pa.C.S. §§ 8102, 8303(c).

In addition to Pennsylvania public school service, under limited circumstances, members may purchase other service credit with PSERS. One of these circumstances, and the one at issue in the present appeal, is the purchase of credit for out-of-state service. Purchasing service credit with PSERS for out-of-state service is a limited benefit only available under specific circumstances. 24 Pa.C.S. § 8304(a); *Account of Thomas E. Kocis*, Docket No. 2020-04, at \*5 (PSERB June 27, 2022). This limited option allows a member to purchase credit for service rendered “in any public school or public educational institution in any state other than [Pennsylvania] or in any territory or area under the jurisdiction of the United States.” 24 Pa.C.S. § 8304; 22 Pa. Code § 213.4(f) (same). This optional purchase is specifically limited to service in **public** schools and institutions. *Id.*

A member may not earn or purchase service credit with PSERS beyond what is permitted in the Retirement Code. There is simply no provision in the Retirement Code that allows a member to purchase prior service with a **private** school or a **private** institution. Indeed, the law is well settled that credit for service with a **private** employer is never purchasable under the Retirement Code, even if the service was rendered in Pennsylvania. See *Golebieski v. Pub. Sch. Emps.’ Ret. Bd.*, 636 A.2d 268, 271 (Pa. Cmwlth. 1993); *Cain v. Pub. Sch. Emps.’ Ret. Sys.*, 651 A.2d 660, 662 (Pa. Cmwlth. 1994); *Thorpe v. Pub. Sch. Emps.’ Ret. Bd.*, 879 A.2d 341, 350 (Pa. Cmwlth. 2005); *Trotz v. State Emps.’ Ret. Bd.*, 495 A.2d 650, 652-53 (Pa. Cmwlth. 1985); *Account of Karl R. Scheibenhofer*, Docket No. 2013-02, at \*6 (PSERB Oct. 4, 2013); *Account of Diane M. Zeiger*, Docket No. 2016-14, at \*6 (PSERB Mar. 13, 2017); *Account of Barbara Bess-Pashak*, Docket No. 2017-01, at \*6 (PSERB Mar. 13, 2019); *Account of Lois B. Roney*, Docket No. 2007-24, at \*5-7 (PSERB Mar. 31, 2009); see also *Shafer v. State Emps.’ Ret. Bd.*,<sup>2</sup> 696 A.2d 1186, 1194 (Pa. 1997). Although the Board must

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<sup>2</sup> Cases interpreting the State Employees’ Retirement Code provisions “are equally applicable in deciding issues arising under similar or identical provisions” of the PSERS Retirement Code. *Krill v. Pub. Sch. Emps.’ Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

liberally administer the system, it does not have the authority to authorize the purchase of service credit for time worked at a private entity. Such action would be tantamount to circumventing the express language of the Retirement Code, which the Board cannot do. *Dowler v. Pub. Sch. Emps.' Ret. Bd.*, 620 A.2d 639 (Pa. Cmwlth. 1993). Accordingly, as a matter of law, the service that Claimant rendered at a private university in Ohio is not eligible for credit with PSERS.

In Claimant's initial appeal to the ESRC, he requested that PSERS allow him to purchase prior service rendered at Muskingum University without a completed purchase form. (PSERS-8). This request regarding an incomplete form is no longer at issue because, regardless, service credit with PSERS cannot be purchased for time worked at a private entity. For completeness, however, the Board notes that to purchase out-of-state service *with a public entity where eligible*, the service must be "certified by the previous employer." 24 Pa.C.S. § 8304(a); *Day v. Pub. Sch. Emps.' Ret. Sys.*, 682 A.2d 398, 400 (Pa. Cmwlth. 1996) (the plain language of the Retirement Code mandates that a request to purchase out-of-state service be certified by the out-of-state employer). Therefore, Claimant's request to purchase the out-of-state service credit without employer certification would have necessarily been denied.

For the above-stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimant may purchase credit for the out-of-state service he rendered at Muskingum University, a private university in Ohio. Accordingly, PSERS' Motion for Summary Judgment is GRANTED and Claimant's Request to Purchase Out-Of-State Service is DENIED.

**COMMONWEALTH OF PENNSYLVANIA**

**PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF MARK J. ZILINSKAS  
DOCKET NO. 2021-01  
CLAIM OF MARK J. ZILINSKAS

**ORDER**

AND NOW, upon consideration of Claimant's Request for Administrative Hearing and PSERS' Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Request for Administrative Hearing is DISMISSED in compliance with 22 Pa. Code § 201.6(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. Accordingly, this Board denies Claimant's request to purchase credit with PSERS for the service he rendered at Muskingum University.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Richard Vague, Chairman