



PSERB Resolution 2024-34

Re: Account of Prusick, Docket No. 2019-11

May 31, 2024

RESOLVED, that in the matter of David J. Prusick, Docket No. 2019-11, 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 DAVID J. PRUSICK
DOCKET NO. 2019-11
CLAIM OF DAVID J. PRUSICK

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 David J. Prusick's ("Claimant") Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on July 17, 2023, and served a copy by First Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36. By letter dated July 17, 2023, PSERS notified Claimant that he had 30 days to respond under Pa.R.C.P. No. 1035.3. Claimant filed a response to PSERS' motion on July 31, 2023 ("Claimant's Reply").

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. A motion for summary judgment eliminates 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. 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 them 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).

The Board has carefully reviewed the entire record, including Claimant's Reply, and finds that there is no genuine issue as to any material fact. Claimant's Reply does not dispute any of the facts set forth in PSERS' motion. Accordingly, the facts alleged in PSERS motion are admitted. Pa.R.C.P. No. 1035.3; see *Bank of Am. v. Gibson*, 102 A.3d 462, 467 (Pa. Super. 2014). Rather, Claimant made additional factual averments about his work for Beaver County AVTS (BCAVTS"). Claimant's service with BCAVTS, however, is irrelevant because it is not the subject of this Appeal. See Claimant's Appeal and Request for Administrative Hearing (PSERS-7). Moreover, Claimant's assertions about BCAVTS are moot, because he already received credit with PSERS for his service with BCAVTS. (See PSERS-6).

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 eligible to purchase his previous service with the Community College of Beaver County ("CCBC"). For the reasons set forth below, the Board grants PSERS' Motion for Summary Judgment.

FINDINGS OF FACT

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

1. Claimant was first enrolled in PSERS in August 1992 by virtue of his employment with the Parkway West Career & Technology Center. (PSERS' Motion for Summary Judgment ("MSJ") ¶ 1).
2. During the 1997-1998 through 1999-2000 school years, Claimant worked for CCBC. (MSJ ¶ 2; PSERS-1; PSERS-4; PSERS-6, ¶ E; PSERS-7, New Matter, ¶¶ 2-3).

3. While working for CCBC, Claimant was enrolled and participated in CCBC's alternate retirement plan with TIAA/CREF. (MSJ ¶ 2; PSERS-1; PSERS-4; PSERS-6, ¶ E; PSERS-7, New Matter, ¶¶ 4-5).

4. CCBC did not report salary or service for Claimant to PSERS. (*Id.*).

5. On December 8, 2004, PSERS received an *Application to Purchase Credit for Full-Time Service (in Pennsylvania Public Schools)* ("Application") from Claimant that requested credit with PSERS for the service he rendered with CCBC during the 1997-1998 through 1999-2000 school years. (PSERS-1).

6. Claimant signed the application, but struck-through the line stating, "I certify that I have not received credit for this service in any other retirement system." (*Id.*).

7. In the employer's section of the Application, CCBC did not report any salary or service for Claimant, but rather certified that Claimant "Rec'd TIAA/CREF (Retirement)." (*Id.*).

8. PSERS did not process Claimant's Application to purchase credit for his service with CCBC, but it did process Claimant's separate requests to purchase credit for service rendered with Ambridge Area School District, North Hills School District, and BCAVTS. (PSERS-3).

9. On July 5, 2018, Claimant requested confirmation from PSERS that his prior requests to purchase service were processed. (PSERS-2).

10. On September 11, 2018, PSERS provided Claimant with a breakdown of service that identified credit for purchases from Ambridge Area School District, North Hills School District, and BCAVTS. (PSERS-3).

11. The September 11, 2018 breakdown did not include any credit for service with CCBC. (*Id.*).

12. On October 11, 2018, Claimant filed an appeal with PSERS' Executive Staff Review Committee ("ESRC"), requesting service credit for his time with CCBC. (PSERS-4).

13. The ESRC, by letter dated July 18, 2019, denied Claimant's appeal, explaining that while Claimant was employed by CCBC, he participated in TIAA-CREF as a retirement plan, and that according to the Retirement Code and its attendant

regulations, once a retirement plan election is made, it is final and binding, therefore making him ineligible to receive credit for his CCBC employment. (PSERS-5).

14. On August 1, 2019, Claimant filed an Appeal and Request for Administrative Hearing. (PSERS-6).

15. On August 14, 2019, PSERS filed an Answer and New Matter. (PSERS-7).

16. On August 21, 2019, Claimant filed a response to PSERS' Answer and New Matter.¹ (PSERS-8).

17. On July 17, 2023, PSERS filed a Motion for Summary Judgment.

18. Claimant filed Claimant's Reply in response to PSERS' Motion for Summary Judgment on July 31, 2023.

19. The matter is ripe for Board adjudication.

DISCUSSION

Pursuant to the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101, et seq., membership in PSERS is mandatory for Pennsylvania school employees except in limited circumstances such as when a community college employee is enrolled in their employer's retirement plan:

(a) Mandatory membership.--Membership in the system shall be mandatory as of the effective date of employment for all school employees except the following:

(1) Any officer or employee of . . . community colleges . . . who is a member of the State Employees' Retirement System or a member of another retirement program approved by the employer.

24 Pa.C.S. § 8301(a)(1). If a community college employee enrolls in their employer's retirement plan, the law directs that the employee "shall not have the right to elect

¹ By failing to deny the specific averments raised in PSERS' New Matter, Claimant admitted the facts raised therein, including that Claimant was enrolled in CCBC's TIAA-CREF retirement plan, which is a retirement plan program approved by CCBC. Pa.R.C.P. No 1029; PSERS' Answer, New Matter, ¶ 4.

membership in [PSERS] and shall not be eligible to participate in the plan.” 24 Pa.C.S. § 8301(b). The Board’s regulations similarly make it clear that “[s]ervice, salary or other compensation paid to an employee while a member of the optional alternate retirement program will not be credited toward membership in, or retirement benefit from, this system.” 22 Pa. Code § 213.1(b). Accordingly, as a matter of law, Claimant is not eligible to receive credit with PSERS for the service he rendered at CCBC because he was enrolled in CCBC’s retirement plan.

Claimant asks the Board to waive the prohibition in the law, because he claims that his funds in CCBC’s retirement plan were damaged by the financial meltdown of the 2000s. (PSERS-4; PSERS-6, ¶ D.3). Claimant, therefore, is requesting equitable relief. This Board, however, is not authorized to grant such relief. Indeed, although the Board must liberally administer the system, it is well established that it does not have the authority to circumvent the express language of the Retirement Code. See *Forman v. Pub. Sch. Emps.’ Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Finnegan v. Pub. Sch. Emps.’ Ret. Bd.*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989), *aff’d* 591 A.2d 1053 (Pa. 1991). Thus, the Board may not ignore the Retirement Code’s prohibition against receiving credit in two retirement systems for the same service. See 24 Pa.C.S. § 8301 (a), (b); 22 Pa. Code § 213.1; see *generally* 24 Pa.C.S. § 8304(a); 24 P.S. § 17-1724-A(c); *In re Account of Thomas E. Kocis*, Docket No. 2020-04 (PSERB June 27, 2022).

CONCLUSION

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 is permitted to purchase credit for his service with CCBC, which is already covered by a retirement plan. Accordingly, PSERS’ Motion for Summary Judgment is GRANTED.

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

IN RE: ACCOUNT OF DAVID J. PRUSICK
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ORDER

AND NOW, upon consideration of Claimant's Appeal and Request for Administrative Hearing, Public School Employees' Retirement System's ("PSERS") Motion for Summary Judgment, and Claimant's Reply:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED in accordance 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. As a result, this Board denies Claimant's request to purchase his service with CCBC.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: _____

By: _____
Richard Vague, Chairman