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SC Court of Appeals

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Edward W. Miller,

Docket No. 14-ALJ-30-0539-CC

Petitioner,

vs.

**ORDER GRANTING  
RESPONDENT'S MOTION  
FOR SUMMARY JUDGMENT**

South Carolina Public Employee Benefit  
Authority, South Carolina Retirement Systems,

Respondent.

**Appearances:** For Petitioner: Judge Edward W. Miller, *pro se*  
For Respondent: Justin R. Werner, Esquire

**STATEMENT OF THE CASE**

This contested case arises from the October 17, 2014 decision of the South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems (Department) finding Edward W. Miller's request for review of the December 2002 determination of the public service credit he was eligible to purchase as a member of the Retirement System for Judges and Solicitors of the State of South Carolina (JSRS or System) was not timely made. Upon motion of the parties in this matter, the South Carolina Administrative Law Court (ALC or Court) issued an Order for Continuance and Scheduling Order, agreeing to hear the above-referenced case as a matter of law based upon stipulations of fact, joint exhibits, and memoranda of law submitted by the parties.

After reviewing the motions, memoranda, exhibits, and statutory and case law, I conclude, as a matter of law, that Respondent's Motion for Summary Judgment should be granted.

**FACTS**

Petitioner Edward W. Miller is an active member of the JSRC, who has approximately 12 years of earned service credit and 16 years of purchased service credit in the System. Petitioner's membership in JSRS commenced on September 3, 2002, when he was seated as a Circuit Court Judge. Prior to his election to Circuit Court, Petitioner maintained a private law practice simultaneously with his employment as an assistant public defender with the Greenville County Public Defender's Office between May 1986 and June 2002. Petitioner now seeks review of a

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determination made by JSRS in December 2002 regarding the amount of service credit he was eligible to purchase in the System in connection with his employment with the public defender's office.

After his election to the bench, but prior to being seated, Petitioner contacted the Department in late July 2002 to inquire about purchasing public services credit in the JSRS for his prior employment with the Greenville County Public Defender's Office. By a letter dated July 25, 2002, the Department forwarded a Request for Service Verification form to Petitioner to obtain the verification of his employment with the public defender's office necessary to process his service purchase request. On December 16, 2002, the Department received the completed service verification form signed by Petitioner and the public defender's office. In the member information section of the form, Petitioner indicated that he had been employed by the public defender's office between May 12, 1986, and June 30, 2002, but that the employment had not been "full time" service. Similarly, in the employer verification section of the form, the public defender's office confirmed that Petitioner had been employed by the office as an assistant public defender between May 1986 and June 2002 and that the service had not been "full time" service, but had been part-time service equal to 60% of full-time employment. The defender's office also verified on the form that Petitioner's total earnings for the sixteen years of his employment with the office had been \$302,086.84.<sup>1</sup>

Based upon the verification form, the Department determined that Petitioner was eligible to purchase 9 years, 8 months, and 5 days of public service credit in JSRS in connection with his part-time employment with the Greenville County Public Defender's Office between May 1986 and June 2002, for a cost of \$43,963.02.<sup>2</sup> By a letter dated December 23, 2002, the Department mailed Petitioner a Member Service Payment Invoice for the purchase of 9 years, 8 months, and 5 days of public service credit. Subsequently, on August 1, 2003, Petitioner completed the purchase of the public service credit as invoiced.

By a letter dated August 7, 2014, Petitioner requested formal review of the December 2002 determination of the amount of public service credit he was eligible to purchase in JSRS for his

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<sup>1</sup> This form also reflects that Petitioner was employed by the public defender's office in a full-time position between April 1980 and June 1981. Petitioner participated in the South Carolina Retirement System in connection with that employment, withdrawing his contributions upon leaving the position in 1981. Petitioner established full credit for that year and three months of withdrawn service in JSRS at the same time as the public service purchase in question in this matter. The calculation of the purchase of this withdrawn service is not in dispute.

<sup>2</sup> This 9 years, 8 months, and 5 days of credit was determined by applying the 60% part-time percentage reported on the verification form to the 16 years, 1 month, and 18 days of the total duration of Petitioner's employment for the public defender's office.

employment with the Greenville County Public Defender's Office. In his request for review before the Department, Petitioner sought to "appeal [the] agency's decision in December of 2002 to allow [him] to purchase only 60% of [his] allowable service credit for the time period of May 12, 1986 through June 30, 2002." In particular, Petitioner asserted that the part-time service reported on the Request for Service Verification form completed by Petitioner and the defender's office in December 2002 reflected only his nominal classification as a part-time assistant public defender for staffing and benefit purposes, but did not reflect his true workload in that position, which was consistent with the caseload and time demands of a full-time public defender. In addition, Petitioner contends that other members of JSRS have been allowed to purchase full-time service credit in the System for similar work.

By Final Agency Determination No. 14-015, the Department found that Petitioner's request for review of that December 2002 determination was not timely filed and should be dismissed. Petitioner now seeks review of that Final Agency Determination in this contested case proceeding.

#### **STANDARD OF REVIEW**

Under Administrative Law Court (ALC or Court) Rule 68, this Court may apply the South Carolina Rules of Civil Procedure in contested case proceedings where no ALC rule applies and when practicable. Therefore, Rule 56(c), SCRCP, applies in determining whether summary judgment is proper in this case. Summary judgment is proper when there is no issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000); Rule 56(c), SCRCP. Summary judgment should not be granted, even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusions or inferences to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Fleming v. Rose, 338 S.C. 524, 236 S.E.2d 732 (2000). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable ambiguities and inferences in the light most favorable to the non-moving party. Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Trico Surveying, Inc. v. Godley Auction Co., 314 S.C. 542, 431 S.E.2d 565 (1993).

The parties have stipulated that there is no genuine dispute regarding the material facts relevant to a decision in this case.

## DISCUSSION

Petitioner argues that the Department should not have applied the doctrine of laches to deny his claim. However, the Department did not dismiss Petitioner's claim based upon the equitable doctrine of laches, but under the statutory terms required for a timely claim under the South Carolina Retirement Systems Claims Procedures Act (Act) with consideration given to the Department's procedures in effect at the time of the 2002 decision.

The time of the decision for which Petitioner seeks review in this matter and the time of the filing of his request for review bridges two sets of administrative procedures. When JSRS reached its decision on the amount of public service credit Petitioner was eligible to purchase in December 2002, the proper recourse for the member of JSRS who disagreed with a determination made by the Department, including a determination involving the purchase of service credit, was to seek administrative review of that determination under the Department's internal administrative review procedures. See Internal Administrative Review Procedures for the South Carolina Retirement Systems § 1(a)(6) (1997) (Procedures). Under those procedures, the member would initiate the administrative review by requesting that the appropriate department manager review the disputed decision and issue a formal administrative ruling in the matter which could, in turn, be appealed to the appropriate Deputy Director of the South Carolina Retirement Systems and then the Director of the Department. Procedures §§ 2(a)-(b), 3(a). In order to properly initiate review of a decision of the Department, the member was required to make the initial request for formal review by the department manager within thirty days of his notification of the determination at issue. Procedures § 2(a) ("The request for formal review must be made within thirty (30) days after notification of the determination.") (emphasis added). And, if the member failed to timely make that request, or otherwise failed to comply with the administrative review procedures, the review of the determination would terminate and the Department's initial decision would "be deemed the final decision of the agency and the Budget and Control Board." Procedures § 1(c).

Those internal administrative review procedures were supplanted by the enactment of the Act in 2003. See S.C. Code Ann. § 9-21-10 et seq. (Supp. 2014). For claims filed after July 1, 2003, the Act, and the procedures set forth therein, "constitute the exclusive remedy for a dispute or controversy between the retirement systems and a member or a member's designated beneficiary arising pursuant to or by virtue of Title 9 of the Code of Laws of South Carolina," and any claim presenting such a dispute "must be resolved in accordance with the procedures and provisions

provided in [the Act].” Id. § 9-21-30. In order to timely file a claim with the retirement systems under the Act,

[a] member or the member’s designated beneficiary shall file a claim concerning an administrative decision by the retirement systems arising pursuant to or by virtue of this title that adversely affects the personal interest of the member or the member’s designated beneficiary by the filing of a written claim with the director within one year of the decision by retirement systems.

Id. § 9-21-50(A) (emphasis added). If a member does not timely file a claim pursuant to section 9-21-50 with regard to a decision of the Department, the member has failed to exhaust his or her agency remedies under the Act and is precluded from seeking a contested case hearing before this Court to challenge the decision in question. See id. § 9-21-20(5) (Supp. 2014) (stating that the first prerequisite to the “exhaustion of agency remedy” under the Act is for the member to have “filed a timely claim pursuant to Section 9-21-50 containing the information required pursuant to that section”) (emphasis added); id. § 9-21-60 (Supp. 2014) (providing that a claimant under the Act may only seek review of a Department decision with the ALC, “[u]pon exhaustion of the agency remedy set out in this chapter”); see, generally, Richard H. Seamon, Paige J. Gossett and John D. Geathers, Administrative Agencies-General Concepts and Principles, in South Carolina Administrative Practice and Procedure 1, 92-93, 102-104 (Randolph R. Lowell ed., 3d ed. 2013) (noting that, when a person entirely foregoes his or her administrative remedies by failing to timely pursue those remedies before seeking judicial review (rather than simply seeking judicial review prematurely or in addition to administrative remedies), that failure to timely exhaust his or her administrative remedies generally precludes judicial review altogether (rather than merely delaying such review); and noting further that, where the exhaustion requirement is a statutory one, this bar to review by the courts may be jurisdictional).

In the instant matter, by a Member Service Payment Invoice prepared December 20, 2002, and mailed to Petitioner on December 23, 2002, the Department notified Petitioner of its determination of the amount of public service credit he was eligible to purchase in JSRS based upon his employment with the Greenville County Public Defender’s Office between 1986 and 2002. The invoice clearly specified that the total public service credit Petitioner was eligible to purchase for his employment between May 12, 1986 and June 30, 2002, was 9 years, 8 months, and 5 days, based upon 60% of full-time equivalent service credit for that period. Upon receipt of the invoice, Petitioner did not seek review of the calculation reflected on that invoice or otherwise contact the Department to inquire about the accuracy of the service purchase invoice. To the contrary, Petitioner

purchased the service as invoiced without protest, in August 2003. Then, in August 2014, eleven years after the issuance and payment of that invoice, Petitioner sought formal review of the calculation of the public service credit he was eligible to purchase as reflected on that invoice.

Petitioner's August 2014 request for review of the December 2002 invoice is untimely, both under the provisions of the Department's internal administrative review procedures that were in effect at the time the invoice was issued, and under the provisions of the Act that were in effect at the time Petitioner's request for review was submitted. Specifically, the request for review was not filed within thirty days of Petitioner's notification of the public service he was eligible to purchase upon his receipt of the December 2002 invoice, see Procedures § 2(a), nor was it filed within one year of the date of that invoice, see S.C. Code Ann. § 9-21-50(A). Rather, the request for formal review was not submitted with the Department until some eleven years had elapsed since the invoice was issued and paid. Therefore, because Petitioner did not timely submit a written appeal of the December 2002 invoice, his untimely request for further review of that determination was properly dismissed by the Department. See Procedures § 1(c); S.C. Code Ann. § 9-21-50(A). Furthermore, by failing to timely file his claim, Petitioner also failed to exhaust his agency remedy under the Act and is now precluded from pursuing his claim on its merits before the ALC as a matter of law because of his failure to exhaust those remedies. S.C. Code Ann. §§ 9-21-20(5)(a), 9-21-60.

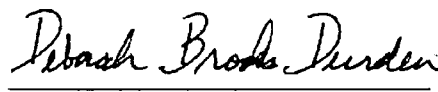
In sum, because Petitioner's request for review of the December 2002 invoice was not timely made, it was properly dismissed by the Department under the plain terms of the applicable claims procedures and constitutes a failure of Petitioner to exhaust his administrative remedies such that the matter cannot be heard by this Court on the merits.

Accordingly, I find that Petitioner's Motion for Summary Judgment should be granted.

**ORDER**

**IT IS THEREFORE ORDERED** that Respondent's Motion for Summary Judgment is **GRANTED** and this matter is **DISMISSED** with prejudice.

**AND IT IS SO ORDERED.**

  
Deborah Brooks Durden  
Administrative Law Judge

August 24, 2015  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman  
Judicial Aide to Deborah Brooks Durden

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