



# The South Carolina Court of Appeals

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DEPUTY CLERK

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February 24, 2017

Rosemary S. Smith  
205 Disciple Avenue  
Moncks Corner SC 29461

Re: Rosemary Smith v. SCPEBA  
Appellate Case No. 2017-000217

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MAR 06 2017

SC Court of Appeals

Dear Ms. Smith:

Our records reflect that the time for ordering the transcript has expired. Within ten (10) days of the date of this letter, you must file a copy of the letter showing that you have timely ordered the transcript from the Administrative Law Court. If you have not timely ordered the transcript, you must serve and file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten (10) days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Jana E. Shealy  
South Carolina Public Employee Benefit Authority, South Carolina  
Retirement Systems

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MAR 06 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Rosemary S. Smith, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 South Carolina Public Employee Benefit )  
 Authority, South Carolina Retirement )  
 Systems, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

AGENCY INFORMATION SHEET  
AND NOTICE OF APPEARANCE

DOCKET NO. 16-ALJ-30-0197-CC

Pursuant to ALC Rule 12, Respondent South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems, hereby files the following Agency Information Sheet in the above-captioned matter:

**1. Identifying information on the matter in controversy:**

Petitioner is an inactive member of the South Carolina Retirement System ("SCRS"), who is challenging Final Agency Determination No. 16-013 issued by Respondent South Carolina Retirement Systems on May 31, 2016, in which the Retirement Systems affirmed the determination not to process Petitioner's application for disability retirement benefits because it was not timely filed. Respondent is a division of the South Carolina Public Employee Benefit Authority that administers the retirement benefits provided by the SCRS pension plan.

The statutory provisions giving rise to this controversy include S.C. Code Ann. § 9-21-60 (Supp. 2015), which provides the Court with jurisdiction of this matter under the South Carolina Retirement Systems Claims Procedures Act, and S.C. Code Ann. § 9-1-1540(B)(1) (Supp. 2015), which sets forth the requirements for filing a disability retirement application under SCRS.

For all other identifying information, please refer to the Final Agency Determination filed herewith.

**2. Has the agency staff issued a final written decision regarding its action or inaction in this matter?**

Yes. See attached Final Agency Determination.

**3. Names, addresses, telephone numbers and e-mail addresses of all known parties and their attorneys, if represented:**

Petitioner: Rosemary Smith  
205 Disciple Avenue  
Moncks Corner, South Carolina 29461  
Telephone: (843) 688-4965  
namon6574@yahoo.com

Petitioner's Attorney: *None at this time.*

Respondent: South Carolina Public Employee Benefit Authority,  
South Carolina Retirement Systems  
202 Arbor Lake Drive  
Columbia, SC 29223  
Telephone: (803) 737-6800

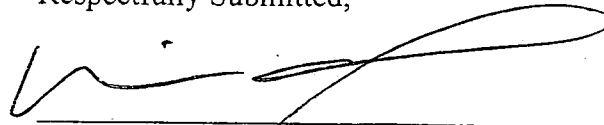
Respondent's Attorney: *See below.*

**4. Names, addresses, and telephone numbers of any persons who have exercised their legal right to object to the issuance of the permit or license:**

Not applicable.

Pursuant to ALC Rule 8(B), notice is hereby given that the undersigned counsel is authorized to and will be representing Respondent South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems, in this matter. Further, by my signature below, I certify that a copy of this Agency Information Sheet has been served on all parties to this matter by first class mail on the date shown below.

Respectfully Submitted,



Melissa Alexander  
Legal Counsel  
Stephen R. Van Camp  
General Counsel  
South Carolina Public Employee Benefit Authority  
202 Arbor Lake Drive  
Columbia, SC 29223  
Telephone: (803) 737-6830  
Facsimile: (803) 737-7746  
E-mail: malexander@peba.sc.gov

June 29, 2016  
Columbia, South Carolina

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SC Court of Appeals



*Serving those who serve South Carolina*

**FINAL AGENCY DETERMINATION**

**NO. 16-013**

In Re Rosemary Smith, SSN XXX-XX-1769

This Final Agency Determination is issued in accordance with the South Carolina Retirement Systems Claims Procedures Act set out at S.C. Code Ann. §§ 9-21-10 et seq. (Supp. 2015) and the South Carolina Retirement Systems Claims Procedure (2005). In this matter, Claimant Rosemary Smith ("Claimant") seeks review of the determination of the South Carolina Retirement System finding she is ineligible to apply for disability retirement benefits pursuant to S.C. Code Ann. Section 9-1-1540 because she failed to apply for disability retirement while a "member in service" with a covered employer in the South Carolina Retirement System.

BACKGROUND

Claimant was employed by Berkeley County School District 1 ("School District") as a Bus Assistant. Claimant participated in the South Carolina Retirement System ("SCRS" or "System") with respect to her employment with the School District.

On November 13, 2013, Claimant suffered an injury caused by lifting while at work (Workers Compensation – First Report of Injury or Illness). According to the Employer's Disability Employment Status Report completed by the School District, Claimant last physically worked for the School District on November 13, 2013.

Claimant's Workers Compensation Claim was settled in November 2014. Claimant terminated employment with the School District on November 24, 2014.

Claimant filed her disability retirement application with SCRS on January 14, 2016.

Claimant's disability retirement application was attached to a letter dated January 11, 2016, from Ms Tina Dickerson, Benefits Program Coordinator for the School District. Ms Dickerson noted that immediately following Claimant's separation from employment with the School District, Claimant "requested and was given an application for long term disability by an insurance technician with the district." Claimant completed the application for long term disability and submitted it to the School District's long term disability carrier. According to Ms Dickerson, after Claimant submitted the form to The Standard Insurance Company, The Standard advised Claimant that "she should have applied for disability retirement instead of long term disability." By the time Claimant "was informed that she should have applied for disability retirement, the 90-day window for completing the disability retirement application had expired." Thereafter, Claimant requested the assistance of Ms Dickerson to submit the appropriate disability retirement paperwork to SCRS. Based on the extenuating circumstances of Claimant's case, Ms Dickerson stated that Claimant "is requesting to be considered for disability retirement."

In a letter dated March 7, 2016, the SCRS claims manager advised Claimant that pursuant to S.C. Code Ann. Section 9-1-1540(B)(1), Claimant was ineligible to apply for disability retirement benefits because she had submitted the disability retirement application more than ninety days after her employment with the School District had terminated. Claimant filed the disability retirement application over a year after terminating employment with the School District. The claims manager noted that there was no exception to the "member in service" filing deadline if a member applies for long term disability benefits instead of disability retirement benefits or for any other reason. Therefore, because Claimant did not file her application within the statutory filing period, SCRS could not process Claimant's disability retirement application.

In a letter dated March 10, 2016, Claimant appealed to Director Peggy Boykin requesting that she be allowed to apply for disability retirement. Claimant asserted that she was not made aware she should have applied for retirement instead of long term disability. If she had been informed she needed to sign up for retirement, she would have done it before November 20, 2014.

## DISCUSSION

As set forth below, I find that SCRS properly determined that Claimant is ineligible to apply for SCRS disability retirement benefits because Claimant failed to apply while a “member in service” with a covered employer

S C Code Ann Section 9-1-1540(B)(1) provides

**(B)(1) Upon the application of a member in service** or of the member’s employer received by the system after December 31, 2013, **a member in service** who has the earned service required for the member’s class pursuant to Section 9-1-1510, or who is disabled as a result of an injury arising out of and in the course of the performance of the member’s duties regardless of length of membership, may be retired by the board if the member is determined to be disabled pursuant to subsection (B)(2) of this section **For purposes of this section, a member is considered to be in service on the date the application is filed if the last day the member was employed by a covered employer in the system occurred not more than ninety days before the date of filing** and, if the member has retired on a service retirement allowance, the member’s date of retirement occurred not more than ninety days before the date of filing

Section 9-1-1540(B)(1) unambiguously requires a member to submit a disability retirement application while a “member in service” The statute specifically provides that for purposes of the disability retirement statute, a member is considered to be “in service” on the date the application is filed if the last day the member was employed by a covered employer in the System occurred not more than ninety days before the date of filing Thus, the statute incorporates a ninety-day grace period after termination of employment in which a member may file a disability application

Claimant terminated employment with the School District on November 24, 2014 A ninety-day period after November 24, 2014, ends on February 22, 2015. It is undisputed that Claimant failed to file a disability retirement application with SCRS on or before February 22, 2015, when she was still a “member in service” with the School District as that term is defined in Section 9-1-1540(B)(1), Claimant filed her disability retirement application on January 14, 2016, nearly 11 months after she was no longer a “member in service” with the School District Thus, because Claimant was no longer a “member in service” at the time she submitted her application, she is not eligible to apply for disability retirement with respect to her position with the School

District See S.C. Code Ann § 9-1-1540(B) (Supp 2015), Lazicki-Thomas v. S.C. Budget & Control Bd., 378 S.C. 72, 75, 661 S.E.2d 374, 376 (2008) (“The disability retirement statutes mandate that the application be filed by a ‘member in service’ ”) (emphasis added)

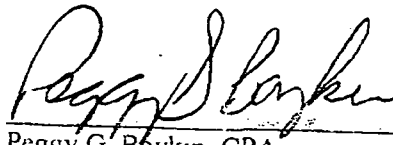
Claimant argues that despite the statutory filing requirements, she should nevertheless be allowed to apply for disability retirement because she was not made aware that she should have applied for disability retirement instead of long term disability. If she had known about the need to sign up for disability retirement, she would have done so before November 24, 2014. Unfortunately, these arguments do not alter the conclusion that Claimant is ineligible to apply for disability retirement benefits when she was no longer a “member in service” with a covered employer.

The System strives to ensure that members of SCRS are aware of all of the benefits available to them under the System and the process for applying for such benefits, by educating both members and their employers alike regarding those benefits through its written publications, website, and call center, among other resources. This information was readily available to both Claimant and the School District.

Even if Claimant was not aware of the statutory “member in service” filing requirements for disability retirement, the System lacks authority to expand the terms of Section 9-1-1540’s mandatory “member in service” requirement to allow Claimant to file an untimely application for disability retirement. See Lazicki-Thomas, 378 S.C. at 75, 661 S.E.2d at 376 (“The disability retirement statutes mandate that the application be filed by a ‘member in service’ ”)

CONCLUSION

For the foregoing reasons, I affirm the System decision not to process Claimant's application for disability retirement benefits filed on January 14, 2016, because it was not timely filed while she was a "member in service" of an employer participating in the South Carolina Retirement System



\_\_\_\_\_  
Peggy G. Boykin, CPA  
Director

May 31, 2016  
Columbia, South Carolina

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**FORM 7  
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Jane E. Shealy, Circuit Court Judge

Case No. 2017-000217

South Carolina Public Employee Benefit  
Authority, South Carolina Retirement System

Respondent,

v.

Rosemary S. Smith

Appellant.

**RECEIVED**

MAR 06 2017

SC Court of Appeals

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on Jane E. Shealy by depositing a copy of it in the United States Mail, postage prepaid, on February 2, 2017, addressed to his attorney of record, Melissa Alexander Legal Counsel, Stephen R. Van Camp General Counsel, South Carolina Public Employee Benefit Authority 202 Arbor Lake Drive, Columbia, South Carolina, 229223.

s/ Rosemary S. Smith  
Rosemary S. Smith  
205 Disciple Avenue  
Moncks Corner, South Carolina 29000  
(843) 419-0810