

[J-28-2019]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

ESTATE OF LYNN D. WILSON BY DONNA KILLINGER, EXECUTRIX,	:	No. 21 WAP 2018
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court entered
	:	December 20, 2017 at No. 1253 CD
v.	:	2016, reversing the order of the State
	:	Employees' Retirement Board entered
	:	June 28, 2016, at No. 2014-04.
	:	
STATE EMPLOYEES' RETIREMENT BOARD,	:	ARGUED: April 10, 2019
	:	
Appellant	:	

OPINION

JUSTICE DOUGHERTY

DECIDED: NOVEMBER 20, 2019

In this discretionary appeal, we consider whether a requested change of beneficiary designation and plan option for benefits payable under the State Employees' Retirement System (SERS) is effective upon mailing or upon receipt by SERS, where SERS did not receive the required change documentation until after the SERS member's death. We hold the change is not effective until receipt by SERS, the common law mailbox rule does not apply, and the Commonwealth Court erred in holding to the contrary. We therefore reverse and remand for reinstatement of the order of the State Employees' Retirement Board (Board) denying the petition of the Estate of Lynn D. Wilson.

The facts as found by the Board are undisputed. Wilson became a member of SERS on September 21, 1977, as a benefit of his employment with the Department of

Public Welfare. *Estate of Wilson by Killinger v. State Employees' Retirement Board*, 177 A.3d 1020, 1021 (Pa. Cmwlth. 2017) (*en banc*). Upon a member's retirement from state employment, the State Employment Retirement Code, 71 Pa.C.S. §§5101-5958 (the Code), provides a member with several options for distribution of his retirement benefit. Relevant to this appeal are Option 1 and Option 2, which respectively provide:

(1) Option 1. — A life annuity to the member with a guaranteed total payment equal to the present value of the maximum single life annuity on the effective date of retirement with the provision that, if, at his death, he has received less than such present value, the unpaid balance shall be payable to his beneficiary.

(2) Option 2. — A joint and survivor annuity payable during the lifetime of the member with the full amount of such annuity payable thereafter to his survivor annuitant, if living at his death.

71 Pa.C.S. §5705(a). Section 5907(j) of the Code further provides: "A member who is eligible and elects to receive a reduced annuity under Option 1, 2, 3, or 4, shall nominate a beneficiary or a survivor annuitant, as the case may be, by written designation filed with the board at the time of his retirement." 71 Pa.C.S. §5907(j).

Wilson retired on March 1, 1997, and elected to receive the Option 2 annuity with his wife, Christene Wilson, named as his survivor annuitant.¹ Under this selection, Wilson began receiving a monthly annuity payment of \$741.38. See Hearing Exhibit SERS-4. The Option 2 annuity selection provided that if Wilson predeceased his designated survivor annuitant, she would continue to receive this monthly benefit for the remainder of her life. The Option 2 selection further provided that if Christene, as Wilson's Option 2 survivor annuitant, predeceased him, the monthly benefit would be extinguished upon his

¹ The Code defines a survivor annuitant as: "The person or persons last designated by a member under a joint and survivor annuity option to receive an annuity upon the death of such member." 71 Pa.C.S. §5102.

death unless, prior to his death, he changed his survivor annuitant designation or benefit option. See 71 Pa.C.S. §5705(a).

Christene Wilson did predecease her husband; she died in a car accident on November 27, 2011. Upon receiving notification of Christene's death, SERS sent a letter dated May 22, 2012, explaining that due to the death of his designated survivor annuitant, Wilson could amend his retirement option election.² See Hearing Exhibit SERS-4. The May 22, 2012 correspondence provided Wilson with instructions and documentation to make an option change and specifically provided: "We cannot process your option change application until we **receive** that document." *Id.* (emphasis added). The May 22, 2012 correspondence included an "Option Change Estimate" stating a switch from Option 2 to Option 1, for example, would reduce Wilson's monthly payment by \$148.21, and his new monthly payment would be \$593.17. *Id.* Finally, the May 22, 2012 correspondence provided an Option Change Counseling Checklist, which required Wilson to affirm his understanding of the options in order to assist him in making an informed decision prior to selecting changes to his retirement plan. See Hearing Exhibit SERS-5. The checklist provided the following information relevant to the present appeal:

B. DEATH BENEFITS

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² The relevant Code provision, 71 Pa.C.S. §5907(j), specifically provides in relevant part: "A member having designated a survivor annuitant at the time of retirement shall not be permitted to nominate a new survivor annuitant unless such survivor annuitant predeceases him or unless the member is awarded a divorce or becomes married subsequent to the election of the option. In such cases, the annuitant shall have the right to reelect an option and to nominate a beneficiary or a new survivor annuitant and to have his annuity recomputed to be actuarially equivalent as of the date of recomputation to the annuity in effect immediately prior to the recomputation. In no other case shall a benefit plan be changed by an annuitant."

Since my designated survivor predeceased me, **there will be no death benefit payable unless I select a new option plan . . . other than the portion** of my last month's check due to me at the time of my death.

*

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C. PROCEDURES

I understand that my option change election will be effective **the date my Application for Option Change is received at SERS**. It may take up to sixty days to process the change. Any increase will be paid retroactively and any decrease to my benefit will cause a retroactive billing.

Id. (emphasis added).

Wilson checked "yes" to the items on the Option Change Checklist, thereby affirming his understanding of his options and the procedure to effectuate a change in his option selection, and signed and dated it June 1, 2012. Also on June 1, 2012, Wilson completed and signed an Application for Option Change (SERS Application) and a Retired Member Beneficiary Nomination, which we refer to collectively as the "Option Change Documents." The executed Option Change Documents reflected Wilson's new election of the Option 1 benefit, and named his daughters Diana L. Johns and Donna I. Killinger as the Principal and Contingent Beneficiaries, respectively.³ *Id.*

Wilson died on June 9, 2012. The Option Change Documents were date-stamped as received by SERS on June 13, 2012. As SERS had not yet received notice of Wilson's death when it received the Option Change Documents, SERS took the administrative

³ A beneficiary is distinct from a survivor annuitant and is defined in the Code as: "In the case of the system, the person or persons last designated in writing to the board by a member to receive his accumulated deductions or a lump sum benefit upon the death of such member. In the case of the plan, the person or persons last designated in writing to the board by the participant to receive the participant's vested accumulated total defined contributions or a lump sum benefit upon the death of the participant." 71 Pa.C.S. §5102.

steps to change Wilson's retirement option to Option 1. On July 10, 2012, however, SERS received notification of Wilson's death from his daughter, Diana Johns. In subsequent correspondence to Wilson's Estate dated November 29, 2012, SERS confirmed the Option Change Documents were not received by SERS prior to Wilson's death, and consequently, the changes reflected in those documents were not effective. Accordingly, SERS informed the Estate that at the time of Wilson's death, Option 2 was the elected benefit on the account, and as there is no death benefit available under Option 2, there was no benefit payable to the Estate after the death of both Wilson and his survivor annuitant Christene.⁴ See Hearing Exhibit SERS-9; see also 71 Pa.C.S. §5705(a)(2) (joint and survivor annuity is payable to member during his lifetime and is thereafter payable to survivor annuitant "if living at [member's] death"). Additionally, SERS stated because there was no payable death benefit under Option 2, the June 2012 retirement benefit paid to Wilson before SERS learned of his death was an overpayment, which must be returned to SERS. See *Id.*

The Estate, through counsel, wrote to SERS and asked the agency to reconsider its determination that Wilson's change from Option 2 to Option 1, and selection of beneficiaries, was not effective, noting that while the Option Change Documents were received after Wilson's death, they had been dated, signed and mailed prior to his death. See Hearing Exhibit SERS-10. SERS responded by reiterating the option change was ineffective because it was not received until after Wilson's death, and SERS lacked authority under the Code to permit an option change or beneficiary designation after a

⁴ The record indicates that, had Wilson's option change been effective, the present value of Wilson's pension as of June 13, 2012 was \$77,368.28.

member's death. See Hearing Exhibit SERS-11, *citing* 71 Pa.C.S. §5705(a)(2) (describing Option 2 benefit, which terminates upon death of member and is paid to survivor annuitant, only if living at member's death); 71 Pa.C.S. §5907(j) (describing limited circumstances under which member can nominate new survivor annuitant).

The Estate then filed an appeal to the SERS Appeals Committee, again seeking to effectuate Wilson's option change. See Hearing Exhibit SERS-12. On February 14, 2014, the Appeals Committee denied relief. See *id.* Hearing Exhibit SERS-14. The Appeals Committee reiterated its position that, for an option change request to be honored, the Option Change Documents must be received by SERS prior to the member's death. *Id.*, *citing* 71 Pa.C.S. §5907(j) (members may change retirement option upon death of survivor annuitant; in that case, member may nominate a beneficiary "by written designation filed with the board").

On the Estate's subsequent appeal to the Board, Hearing Officer Ruth Dunnewold held a hearing on February 25, 2015. At the hearing, SERS employee Dana Shettel testified SERS received Wilson's completed application for option change and a beneficiary nomination form on June 13, 2012. See N.T. 2/25/15 at 9. Shettel further testified Wilson's daughter, Dianna Johns, certified to SERS that Wilson died on June 9, 2012. See *id.* In addition, Joseph Torta, the Director of the Office of Member Services testified a SERS member can change his option election in the event his survivor annuitant predeceases him, and in order to effectuate a change of retirement benefits, a member must contact a regional counseling center to discuss options and elect to make an option change. *Id.* at 25-26. Torta further testified a member who wishes to make a change is required to bring the relevant documents to a field office and file in person, or

mail the paperwork. *Id.* Torta also testified documents are considered to be “filed” when they are received by SERS. *Id.* at 27. Torta also testified Wilson’s documents were received and date-stamped on June 13, 2012. *Id.* at 28. Torta further testified SERS determined the Option Change Documents were received after Wilson’s death, and thus did not effectively change Wilson’s prior benefit election. Finally, Torta stated that, because the documents were not received prior to Wilson’s death, and because Christene, Wilson’s survivor annuitant, predeceased Wilson, the annuity payments were stopped, and there was no remaining death benefit payable. *Id.* at 30-31. This testimony is reflective of the procedure for paying death benefits pursuant to Option 2. *See, e.g.,* 71 Pa.C.S. 5705(a)(2) (providing annuity is payable to member during his lifetime and then to survivor annuitant, if living at time of member’s death).

Wilson’s daughters Dianna Johns and Donna Killinger testified they were aware their father was making an option change for his retirement benefits, listing them as beneficiaries. *Id.* at 12-14, 18. Johns and Killinger also testified their father mailed his own documents, they did not place the documents in the mail for him, and they believed he mailed the documents prior to his death. *Id.* at 15-16, 19-20.

On August 13, 2015, the Hearing Officer issued an opinion and recommendation that the Estate’s claim be denied and Wilson’s option change not be honored because it was not “filed” with SERS prior to his death, and was thus “ineffective in making any changes.” Hearing Officer opinion at 12. The Hearing Officer rejected the Estate’s request to apply the common-law “mailbox rule,” which would provide the date the documents were deposited in the mail is the date of “service” or “filing” with the party to whom they were addressed — in this case, SERS. *See Id.* at 11. In declining to apply

the mailbox rule, the Hearing Officer noted the Board adopted the General Rules of Administrative Practice and Procedure (GRAPP). *Id.*, citing 4 Pa. Code §250.1 (adopting GRAPP as the regulations “applicable to the activities of and proceedings before the Board”).⁵ Section 31.11 of the GRAPP regulations adopted by the Board governs the timely filing of documents and provides:

Pleadings, submittals or other documents required or permitted to be filed under this part, the regulations of the agency or any other provision of law shall be received for filing at the office of the agency within the time limits, if any, for the filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.

Id. at 12, quoting 1 Pa. Code §31.11. Noting the applicability of GRAPP Section 31.11, and that the parties did not dispute the Option Change Documents were received by SERS after Wilson’s death, the Hearing Officer found Wilson’s purported option change to be ineffective.⁶ *Id.* The Hearing Officer concluded Wilson’s survivor annuitant was Wilson’s wife, who predeceased him, and thus his Option 2 benefit was extinguished and not payable to the Estate. See *id.*

On review for final disposition, the Board noted its agreement with the Hearing Officer’s “well-reasoned analysis” and accepted and adopted her Opinion and

⁵ The Board is specifically authorized to “adopt and promulgate rules and regulations for the uniform administration of the system” which, once adopted, are “as effective as if fully set forth in” the Code. 71 Pa.C.S. §5902(h).

⁶ The Hearing Officer stated there was no evidence presented of the date the Option Change Documents were actually deposited in the mail, but the date was immaterial due to the rejection of the mailbox rule under GRAPP Section 31.11. See Hearing Officer opinion at 11 & n.3.

Recommendation.⁷ Board Opinion at 3. The Estate filed an appeal in Commonwealth Court.

An *en banc* panel of the Commonwealth Court reversed.⁸ The Commonwealth Court held Wilson's Option Change Documents were effective because Wilson completed and mailed them prior to his death. *Estate of Wilson*, 177 A.3d at 1024. In holding the mailbox rule should apply, the *en banc* panel distinguished its decision in *Harasty v. Public Sch. Employees' Ret. Bd.*, 945 A.2d 783 (Pa. Cmwlth. 2008), upon which the Board and Hearing Officer relied.

In *Harasty*, the petitioner was denied certain enhanced retirement benefits because the relevant agency did not receive his paperwork before the deadline established by statute.⁹ *Harasty*, 945 A.2d at 784. Harasty argued he mailed the

⁷ The Board made two modifications to the Hearing Officer's findings based on exceptions filed by SERS: (1) correcting the name of counsel for SERS; and (2) correcting the characterization of Christene Wilson as a "survivor annuitant" rather than a "beneficiary" at the time of Wilson's death, noting because Wilson did not timely file his option change paperwork, he did not have "beneficiaries" as described in Option 1.

⁸ The *en banc* panel consisted of President Judge Leavitt, and Judges Cohn Jubelirer, Simpson, Brobson, Covey, Wojcik and Cosgrove. The Opinion was delivered by Judge Covey and joined by all judges. *Estate of Wilson*, 177 A.3d 1020. Judge Cosgrove filed a concurring opinion in which he joined the majority opinion in full and wrote separately to emphasize the potential due process dangers "posed by administrative directives which require an agency to have actually received a particular item before giving that item effect." *Id.* at 1025-26.

⁹ As part of the 2001 revisions to the Public School Employees' Retirement Code, 24 Pa.C.S. §§8101-8595, the Legislature created a new membership class with enhanced benefits for public school employees. The enhanced benefits were made available to existing members of the retirement system, if they elected membership by filing written notice with the board on or before December 31, 2001, as provided in the revised statute. See 24 Pa.C.S. §8305.1(b) (providing instruction to members to elect class membership **"by filing a written notice with the board on or before December 31, 2001 . . ."**) (emphasis added).

paperwork before the deadline, and claimed he was entitled to application of the mailbox rule. *Id.* at 786-87. The court rejected Harasty's mailbox rule argument, and relied on GRAPP Section 31.11 to hold his election was untimely and ineffective. *Id.* at 787-88, *quoting* 1 Pa. Code §31.11 ("The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.").

In the present case, the Commonwealth Court considered *Harasty* inapplicable because, unlike the statutory deadline for electing class membership involved there, Wilson had no definitive deadline to meet before making his retirement benefit option change. The court further observed there was no way for Wilson to know the date of his death in advance, and thus he had no ability to ensure SERS received his Option Change Documents before his death. *Estate of Wilson*, 177 A.3d at 1024. The court thus considered the dispositive issue to be "not whether SERS received the forms before Wilson's death, but rather, whether Wilson completed and filed the forms" before his death. *Id.* Without expressly articulating the mailbox rule is applicable, the court apparently considered "filing" to mean "mailing," and found "that Wilson completed [the Option Change Documents], and filed same with SERS." *Id.* at 1025. The court also held "SERS'[s] receipt is irrelevant in relation to Wilson's option change and new beneficiaries, particularly when there are no promulgated rules or regulations requiring that [the Option Change Documents] be filed before a member's death." *Id.* The court concluded because Wilson completed and mailed the Option Change Documents to SERS before his death, the option change was effective. *Id.*

SERS filed a petition for allowance of appeal and we accepted review to address the following questions:

(1) Did the Commonwealth Court abuse its discretion and depart from accepted judicial practice in holding that the Decedent's retirement option change application must be considered filed when mailed?

(2) Did Commonwealth Court apply the wrong scope and standard of review to the Retirement Board's adjudication by not affording the appropriate deference to the Retirement Board's interpretation of the State Employees' Retirement Code, 71 Pa.C.S. §§5101-5958, ("Retirement Code") and [duly] adopted regulation for determining a document's filing date, and by making unsupported evidentiary presumptions, regarding the actual mailing of the documents at issue in this case?

Estate of Wilson by Killinger v. State Employees' Ret. Bd., 189 A.3d 386 (Pa. 2018) (*per curiam*). This case presents issues of law pertaining to statutory interpretation of the Code, and our review is plenary and non-deferential. *A.S. v. Pennsylvania State Police*, 143 A.3d 896, 903 (Pa. 2016).

SERS argues the Commonwealth Court abused its discretion in rejecting the Board's interpretation of the Code when it held "[t]he dispositive issue . . . is not whether SERS received the forms before [Decedent's] death, but rather, whether [he] completed and filed the forms." Appellant's Brief at 12, *quoting Estate of Wilson*, 177 A.3d at 1024. While agreeing the issue in this case is whether Wilson's forms were timely "filed," SERS submits the Commonwealth Court's holding the forms were filed when mailed violates the Code and is contradictory to the Board's regulations which specifically address filing. *Id.* at 12-14, *citing* 71 Pa.C.S. §5902(h) (Board may "adopt and promulgate rules and regulations for the uniform administration of the system"); 4 Pa. Code. §250.1 (adopting GRAPP regulations to apply to Board proceedings); 1 Pa. Code. §31.11 (rejecting mailbox rule). SERS notes the General Assembly has empowered the Board to "adopt and promulgate rules and regulations for the uniform administration of the [SERS retirement] system." *Id.* at 13, *quoting* 71 Pa.C.S. §5902(h). SERS observes the Board

adopted the GRAPP provisions under this power, which are “applicable to the activities and proceedings before the Board,” and governs the timely filing of documents. *Id.*, *quoting* 4 Pa. Code §250.1. SERS argues GRAPP clearly provides documents are deemed **filed** with SERS only when received by the agency, and thus specifically rejects the common law mailbox rule. *Id.* at 14, *quoting* 1 Pa. Code §31.11 (“The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.”).

SERS submits the Board’s adoption of GRAPP Section 31.11 applies broadly to SERS’ day-to-day operations, and must be “given controlling weight unless clearly erroneous.” *Id.* at 15, *quoting Lancaster Cty. v. Pennsylvania Labor Relations Bd.*, 94 A.3d 979, 987 (Pa. 2014) (additional citation omitted). SERS further notes, after his wife’s death, Wilson had “the right to reelect an option and to nominate a beneficiary or a new survivor annuitant and to have his annuity recomputed to be actuarially equivalent as of the date of recomputation to the annuity in effect immediately prior to the recomputation.” *Id.* at 16, *quoting* 71 Pa.C.S. §5705(j). SERS explains this provision has two consequences: (1) the present value associated with the contingent survivor annuity dies in the event a survivor annuitant predeceases the member; and (2) the election of a new retirement option does not become effective unless and until the member files the necessary forms with SERS. *Id.* at 16-17.

SERS further notes Section 5907(j) provides when a member selects a change in a retirement option, the law requires the member’s benefit be actuarially recalculated to adjust for the changes in the form of the annuity and the lapse of time between the member’s retirement and the recalculation. *Id.* at 17. In this case, Wilson’s benefit would have to be recalculated to reflect the change from a joint and survivor annuity, which does

not provide for a contingent death benefit, to a single life annuity which provides for a possible lump sum death benefit. *Id.* SERS explains the Option 2 benefit is based on an actuarial formula and calculated to provide a fixed monthly payment for the annuitants' joint lifetime. Accordingly Option 2 does not provide a benefit drawn out over time from an account with a fixed balance with a possibility of either being exhausted over a lifetime, or leaving a residual amount to be paid out as a death benefit after Wilson and his wife's death. *Id.* at 18. Thus, SERS submits, upon the death of a member whose survivor annuitant has also died, there is no present value in an Option 2 annuity, and, consequently, there cannot be a change to the benefit option because the annuity has zero value. *Id.*

SERS argues the Commonwealth Court erred in distinguishing this case from *Harasty*, and holding GRAPP Section 31.11 applies only in cases where there is a set deadline for submission of documents. SERS argues the court's erroneous interpretation will have implications beyond the present SERS context and will affect any and all documents with determinable, but unspecified, "floating" deadlines, including, by way of example, the date of death, marriage, or onset of a disability, contrary to the express terms of GRAPP Section 31.11. *Id.* at 19 & n.2. SERS thus submits the Commonwealth Court abused its discretion in overruling the Board's judgment without justification, and created uncertainty which previously did not exist. SERS argues the court did not follow established standards of review of administrative actions involving an agency's discretion, *i.e.*, courts "will not inquire into the wisdom of an agency's action or into the details or manner of executing agency action" in the absence of fraud, bad faith, abuse of power or

capriciousness. *Id.* at 20, *quoting Slawek v. Com., State Bd. of Med. Educ. & Licensure*, 586 A.2d 362, 365 (Pa. 1990).

SERS further notes the Board “stand[s] in a fiduciary relationship to the members of the system regarding the investments and disbursements of any moneys of the fund,” it must therefore safeguard SERS’ assets from unreasonable exposure to claims, and its analysis of this case comports with its duties as a fiduciary. *Id.* at 21, *quoting* 71 Pa.C.S. §5931(e) (discussing fiduciary relationship and duties of Board to its members). SERS insists the law must be applied neutrally even in those circumstances where a member, his survivor annuitant, and his beneficiaries might receive less than the maximum amount possible of a member’s pension. *Id.* at 21-22, *citing Estate of McGovern v. Com. State Employees’ Ret. Bd.*, 517 A.2d 523 (Pa. 1986). SERS cautions that the Commonwealth Court’s interpretation could lead to the creation of postmortem “death benefits” for members who choose the Option 2 annuity. SERS asserts such postmortem recalculation of benefits will create actuarially unsound benefits which cannot be estimated or predicted and expose the State Employees’ Retirement Fund to significant revisions of its actuarial calculations. *Id.* at 22.

SERS further asserts the Commonwealth Court’s distinction between statutory deadlines, as existed in *Harasty*, and those created by operation of law, as in this case, where Wilson’s Option 2 benefit terminated upon his death unless the Option Change Documents were filed with SERS beforehand, is unsupported by any reasonable construction of GRAPP Section 31.11. SERS avers the text of the regulation does not provide for any disparate treatment when the deadline is created by operation of law, and the Commonwealth Court, in making such distinction has improperly substituted its

judgment for that of the Board. The Board properly exercised its authority, within the bounds and discretion granted by the General Assembly, in finding Wilson did not timely file his Option Change Documents when they were received prior to his death. *Id.* at 23. SERS emphasizes that while the Commonwealth Court “might have a different opinion or judgment in regard to the action of the agency [it] is not a sufficient ground for interference; **judicial** discretion may not be substituted for **administrative** discretion.” *Id.* at 24, quoting *Slawek*, 586 A.2d at 365, quoting *Blumenschein v. Housing Auth. of Pittsburgh*, 109 A.2d 331, 334-35 (Pa. 1954) (emphasis in original). SERS argues the Commonwealth Court thus erred in substituting its discretion and construction of the law for that of the Board, and this Court should reverse the Commonwealth Court’s mandate.

SERS further notes there is no dispute that Wilson executed the Option Change Documents on June 1, 2012, and SERS received them on June 13, 2012, four days after Wilson’s death. SERS argues the Commonwealth Court ignored the bright line rule provided in GRAPP Section 31.11 pertaining to the date of receipt with a “substantial compliance” standard requiring SERS to accept an option change received after death “if the annuitant made every reasonable effort to comply” with the filing deadline. *Id.* at 27, quoting *Alkhafaji v. Tiaa-Cref Individual & Institutional Servs., LLC*, 69 A.3d 219, 222-223 (Pa. 2013) (OISA).

Finally, SERS claims it would be impossible to implement the Commonwealth Court’s rule that the Option Change Documents should be considered filed and effective when deposited in the mail. SERS explains the Code requires the retirement benefit to be recalculated to the actuarially equivalent benefit “immediately prior to the recalculation.” *Id.* at 29, quoting 71 Pa.C.S. §5907(j). As there is no evidence regarding

the actual date of mailing here, SERS cannot calculate the benefit as required under the Code. SERS thus requests reversal of the Commonwealth Court's decision.

In response, the Estate argues GRAPP Section 31.11, upon which SERS and the Board rely, is limited to adversarial proceedings before an agency. The Estate considers GRAPP Section 33.34 to be the relevant provision here: "[t]he date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be." Appellee's Brief at 12-13, *quoting* 1 Pa. Code §33.34. The Estate claims Section 33.34 directs Wilson's Option Change Documents should be deemed filed with SERS when they were placed in the mail, which the record reflects occurred prior to Wilson's death. *Id.* at 13-15.

The Estate also agrees with the Commonwealth Court that *Harasty* is distinguishable because Wilson had no set deadline to meet in this case. The Estate insists June 9, 2012, the date of Wilson's death, could not be considered a deadline for filing because there was no way to know in advance when he would die. The Estate thus argues the mailbox rule should apply because in matters of life insurance and other beneficiary plans, courts have held the contract is complete when the form has been placed in the mail. *Id.* at 15-16, *citing* *Russock v. AAA Mid-Atl. Ins. Co.*, 898 A.2d 636, 638 (Pa. Super. 2006) (insurance policy deemed renewed when renewal payment placed in the mail). The Estate thus agrees with the Commonwealth Court's decision that Wilson's Option Change Documents were filed, and thus effective, on the date mailed, which pre-dated Wilson's death.

Finally, the Estate argues it should receive the value of Wilson's retirement benefit even if the mailbox rule does not apply. *Id.* at 18. The Estate claims it would be unfair if

Wilson's bargained-for assets do not vest in his estate, and the Commonwealth would be unjustly enriched.¹⁰ The Estate submits Wilson was not provided notice the Option Change Documents had to be mailed prior to his death because the documents did not contain any deadline. The Estate thus concludes the Commonwealth Court should be affirmed.

At the outset of our analysis, we acknowledge "the retirement system is a creature of the Legislature and that its members therefore have only those rights created by the retirement benefit statute." *Burris v. State Employees' Ret. Bd.*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000) (additional citations omitted). In addition, the Legislature empowered the Board to "adopt and promulgate rules and regulations for the uniform administration of the system" which, once adopted are "as effective as if fully set forth in" the Code. 71 Pa.C.S. §5902(h). Pursuant to this authority, the Board adopted the GRAPP regulations as provided in Title 1 of the Pennsylvania Code as "applicable to the activities of and proceedings before the Board." 4 Pa. Code §250.1. As stated above, Section 31.11 governs the timely filing of documents and provides:

Pleadings, submittals or other documents required or permitted to be filed under this part, the regulations of the agency or any other provision

¹⁰ In making this argument pertaining to fairness, the Estate refers to Wilson's "constitutional rights" but fails to provide citation to any particular constitutional provision or otherwise develop the argument. Indeed, the Estate's entire constitutional rights argument consists of the following: "[Wilson]'s property right is a Constitutional property right [and] was thus violated by [SERS] without Due Process by law. Further, not only was [Wilson]'s property right Unconstitutionally violated, but the rule and/or regulation that was not Constitutionally promulgated by a rulemaking through notice and comment process." Appellee's Brief at 27. We note the Commonwealth Court did not address any constitutional claims in its opinion. Our review does not reveal a preserved constitutional claim and we focus instead on the Estate's more general assertion of equitable considerations.

of law shall be received for filing at the office of the agency within the time limits, if any, for the filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.

1 Pa. Code §31.11.

We further recognize the well-settled principle that “[t]he interpretation of a statute by those charged with its execution is entitled to great deference, and will not be overturned unless such construction is clearly erroneous.” *Caso v. W.C.A.B. (Sch. Dist. of Philadelphia)*, 839 A.2d 219, 221 (Pa. 2003); see also *Harmon v. UCBR*, 207 A.3d 292, 299 (Pa. 2019), quoting *Harkness v. UCBR*, 920 A.2d 162, 171 (Pa. 2007) (“[a]n interpretation by the agency charged with the administration of a particular law is normally accorded deference, unless clearly erroneous.”). In reversing the Board’s order in this case, the *en banc* panel of the Commonwealth Court considered the Board’s determination to be erroneous. In this regard, however, the Commonwealth Court itself erred.

It is crystal clear the Board has adopted the GRAPP regulations in matters pertaining to its administration of SERS retirement accounts. See 4 Pa. Code §250.1 (“Under 1 Pa. Code §31.1 (relating to scope of part), 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) is applicable to the activities of and proceedings before the Board, . . .”). What is subject to interpretation is the application of GRAPP regulations under the particular circumstances of this case. In reversing the Board’s order, the Commonwealth Court distinguished the present appeal from applicable precedent and accepted the Estate’s position that the Option Change Documents should be deemed filed upon mailing prior to Wilson’s death, and thus were

effective to make the requested change. Our analysis of the relevant provisions leads to the opposite conclusion.

Our review of the Commonwealth Court's decision involves interpretation of the relevant Code sections and the GRAPP regulations, and we are thus guided by principles of statutory construction. We first recognize "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. §1921(b). Section 31.11 of the GRAPP regulations provides, without exception, documents to be filed with an agency "shall be received for filing at the office of the agency within the time limits, if any, for the filing." The provision further directs that the "date of receipt at the office of the agency and not the date of deposit in the mails is determinative." 1 Pa. Code. §31.11. On the other hand, Section 33.34 provides the date of "service shall be the day when the document served is deposited in the United States mail[.]" 1 Pa. Code §33.34.

Despite the Estate's argument to the contrary, it is clear GRAPP Section 31.11, and not GRAPP Section 33.34 is applicable here. The Option Change Documents are unquestionably "documents" to be "received for filing" with SERS under Section 31.11. Moreover, SERS provided Wilson with instructions for completing and returning those documents, specifically explaining they must be received by SERS to be effective. See Hearing Exhibit SERS-4 (providing Wilson with instruction "option change will be effective the date SERS receives your completed" Option Change Documents). See *also* 71 Pa.C.S. §5907(j) ("member who is eligible and elects to receive a reduced annuity under Option 1, 2, 3, or 4, shall nominate a beneficiary or a survivor annuitant, as the case may be, by written designation **filed with the board** at the time of his retirement") (emphasis

added). Nowhere do the procedures governing election of SERS benefit options or the relevant Code provisions refer to “service” of documents as mentioned in Section 33.34.

Moreover, although there was no established, definitive deadline in this case, we reject the Commonwealth Court’s conclusion that GRAPP Section 31.11 is not applicable in such circumstances. Although there was no pre-set deadline for Wilson to file his Option Change Documents, SERS provided clear instructions, rooted in the Code and GRAPP, regarding the procedure for making an option change. Specifically, in its May 22, 2012 correspondence to Wilson, SERS stated “[t]he option change will be effective the date SERS **receives** your completed Application for Option Change form and requirement attachments.” Hearing Exhibit SERS-4 (emphasis added). In addition, Wilson completed the Option Change Counseling Checklist and affirmed the following statement regarding procedures: “I understand that my option change election will be effective **the date my Application for Option Change is received at SERS.**” Hearing Exhibit SERS-5 (emphasis added).

Furthermore, unlike the Commonwealth Court, we read *Harasty* as providing an effective explanation of why the mailbox rule must be inapplicable in the present context. Harasty, a teacher, received several notices from the Public School Employees’ Retirement Board regarding the option to elect enhanced retirement benefits, which specified a December 31, 2001 deadline to make the election. *Harasty*, 945 A.2d at 785. Harasty asserted he completed and mailed the election form on December 21, 2001. *Id.* However, the Public School Employees’ Retirement Service (PSERS) did not receive his election form by the December 31st deadline and, consequently denied his election. At the subsequent hearing, Harasty testified he mailed his election form before the deadline,

and claimed he was entitled to a presumption of timely receipt of the form under the “mailbox rule.” *Id.* at 786-87. In rejecting this argument, the court relied on Section 31.11 mandate that the “date of receipt at the office of the agency and not the date of deposit in the mails in determinative.” *Id.* at 787-88.

The absence of an established deadline in the present case does not undermine the applicability of the reasoning in *Harasty*. Indeed, application of the mailbox rule in the circumstances of this case would undermine the ability of SERS to manage and maintain the retirement fund it oversees. By way of illustration, we reiterate the following pertinent points. At his retirement, Wilson selected Option 2 as his retirement benefit, which provides “[a] joint and survivor annuity payable during the lifetime of the member with the full amount of such annuity payable thereafter to his survivor annuitant, **if living at his death.**” 71 Pa.C.S. §5705(a)(2) (emphasis added). Upon the death of Wilson’s survivor annuitant Christene, SERS counseled Wilson regarding his options and Wilson indicated he understood “[s]ince my designated survivor annuitant predeceased me, there will be no death benefit payable **unless** I select a new option plan . . .” Hearing Exhibit SERS-5 (emphasis added). When Wilson died on June 9, 2012, his Option Change Documents had not yet been received by SERS and his Option 2 selection remained in place, resulting in the benefits being extinguished under the express terms of the Code. Accordingly, when SERS received the Option Change Documents after Wilson’s death, his retirement account had already been terminated by operation of law, and there was no survivor annuity or death benefit payable or capable of being transferred to the Estate. See, e.g., Hearing Exhibit SERS-9 (explaining “because SERS did not receive the option change application until after [Wilson’s] death, his option change cannot be honored and

his death benefit is based on his original option selection, which does not provide a death benefit,” so that no further benefit is payable).

Essentially, the *de facto* deadline for filing Option Change Documents is before the SERS member’s death, and filing in this context must mean “receipt” as indicated by Section 31.11. There is an obvious salutary reason for this. If we were to apply the exception adopted by the Commonwealth Court, and allow “filing” to occur upon mailing at any time before or after a member’s death, so long as he completes the required documents before his death, we would in effect create a death benefit in direct contradiction of the clear terms of the Code. See 71 Pa.C.S. §5705(a)(2) (“A joint and survivor annuity payable during the lifetime of the member with the full amount of such annuity payable thereafter to his survivor annuitant, **if living at his death.**”) (emphasis added).

Moreover, the Commonwealth Court’s interpretation would encourage fraud on the system and undermine the ability of SERS to comply with its fiduciary obligations. By way of a simple example, if a member’s intended beneficiaries discovered the completed Option Change Documents days, weeks, or even months after that member’s death, there is nothing to prevent the application of the Commonwealth Court’s reasoning (which asks only whether the member completed the forms and considers SERS’s date of receipt irrelevant) to allow those intended beneficiaries to bring or mail the documents to SERS, and require SERS to honor the change, contrary to controlling precedent and to the obvious detriment of the system.¹¹ Compare *Estate of Wilson*, 177 A.3d at 1025 (date of

¹¹ The requirement that documents must be received by SERS to be effective also acts to protect a member’s calculated (and quite reasonable) decision to delay the option

SERS's receipt is irrelevant with respect to a member-decedent's option change and naming new beneficiaries, "particularly when there are no promulgated rules or regulations requiring that the SERS Application and Beneficiary Nomination be filed before a member's death") *with Pennsylvania State Univ. v. State Employees' Ret. Bd.*, 935 A.2d 530, 536-37 (Pa. 2007) ("Board 'stand[s] in fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund [such that it] shall not profit either directly or indirectly with respect thereto.' The Board is obligated 'to invest and manage the fund for the exclusive benefit of the members of the system.'"), *quoting* 71 Pa.C.S. §5931; *see also Pennsylvania Sch. Boards. Ass'n, Inc. v. Com., Pub. Sch. Employees Ret. Bd.*, 863 A.2d 432, 442 (Pa. 2004) (discussing Board's fiduciary duty owed to members of system, and finding Board owes no duty to individuals and entities outside system).

Accordingly, we reverse the order of the Commonwealth Court and remand for reinstatement of the Board's order.

Jurisdiction relinquished.

Chief Justice Saylor and Justices Baer, Donohue, Wecht and Mundy join the opinion.

change as long as possible to receive a greater benefit during his lifetime. In this case, as we have noted, Wilson's option change would have reduced his monthly payment by approximately \$150 per month. We recognize the implicit incentive for a member like Wilson to wait to file completed Option Change Documents in order to maximize his benefit as long as he remains alive. For this reason, it makes sense that SERS may effectuate a change only upon **receipt** of completed documents, despite the seemingly harsh impact on the potential intended beneficiaries of a member. *See, e.g. Hess v. Pub. Sch. Employees' Ret. Bd.*, 460 A.2d 1231, 1232 (Pa. Cmwlth. 1983) (member's oral representations of intent to change beneficiaries without filing change documents was insufficient to effectuate change).

Justice Todd files a concurring opinion.