COMMONWEALTH OF MASSACHUSETTS

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Petitioner

v. Docket No: CR-13-294

CR-14-184

Essex Regional Retirement Date: 11/21/2017

Board,

Respondent

**ORDER DENYING PETITIONER’S MOTION FOR RECONSIDERATION**

The Petitioner’s Motion for Reconsideration dated November 3, 2017 and receivedon November 13, 2017, is DENIED.

801 C.M.R. 1.01(7)(l) provides for the filing of motions for reconsideration and reads:

After a decision has been rendered and before the expiration of the time for filing a request for review or appeal, a Party may move for reconsideration. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A [Previous Hit](http://sll.gvpi.net/document.php?id=crab:crab17a-15&type=hitlist&num=1#hit6)motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A, § 14(1) for the purposes of tolling the time for appeal.

The Petitioner’s motion does not identify a clerical or mechanical error in the decision or a significant factor that was over looked. *See Mary Morse v. State Board of Retirement*, CR-13-491 at 2 (CRAB 12/21/2016). Rather, the Petitioner’s Motion for Reconsideration repeats the argument he made previously. In summary, the Petitioner argues that the Respondent failed to prove that the Petitioner worked less than 20 hours a week. That argument did not persuade me and it still does not persuade me, because the Petitioner had the burden of proof and he failed to meet it.

I note that, attached to his motion for reconsideration, the Petitioner provided time sheets (Ex. 2 to his motion for reconsideration) dated the week ending December 23, 2010 and later. To the extent the Petitioner is moving to reopen the evidence that motion is also DENIED.

801 CMR 1.01(k) provides:

Motion to Reopen. At any time after the close of a hearing and prior to a decision being rendered, a Party may move to reopen the record if there is new evidence to be introduced. New evidence consists of newly discovered evidence which by due diligence could not have been discovered at the time of the hearing by the Party seeking to offer it. A motion to reopen shall describe the new evidence which the Party wishes to introduce.

The motion to reopen was not filed until after I issued the decision. Nor is there any reason to believe that these time sheets are newly discovered evidence which could not have been discovered at the time of the hearing with due diligence. *See Lawrence Finneran v. State Board of Retirement,* CR-10-63 at 4-5 (DALA 12/10/2010). But, even if I reopened the record, these time sheets would not help the Petitioner’s case. The Petitioner testified at hearing that he started keeping time sheets in 2007 and he has copies of them (Fact 6 Decision), but none of the time sheets now produced by the Petitioner are dated between 2007 and 2010. The Petitioner became a member of ERRS and there was no dispute as to the number of hours he worked after 2009 and, therefore, the time sheets now offered shed no light on the numbers of hours he worked during the period at issue.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Edward B. McGrath

Chief Administrative Magistrate

Notice sent to: Timothy F. Fallon, Esq.

Christopher Collins, Esq.

CRAB