COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Division of Administrative Law Appeals

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**MICHAEL BELANGER,** Fax: (781) 397-4720

Petitioner[**www.mass.gov/dala**](http://www.mass.gov/dala)

 *v.* Docket No. CR-16-120

**MASSACHUSETTS TEACHERS**

**RETIREMENT SYSTEM,**

Respondent

**Representative for Petitioner**:

*Pro se*

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Shrewsbury, MA 01545

**Attorney for Respondent**:

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 Massachusetts Teachers Retirement System

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**Administrative Magistrate**:

Angela McConney Scheepers

**SUMMARY OF DECISION**

 The Petitioner’s appeal for purchase of prior nonmember service must be dismissed for lack of jurisdiction because he failed to file it within the statutorily prescribed time. *See* G.L. c. 32, § 16(4).

**DECISION**

 On March 17, 2016, Michael Belanger untimely appealed the February 24, 2016 decision of the Massachusetts Teachers’ Retirement System (System), denying his request to purchase prior non-membership service. G.L. c. 32, § 16(4). The System concluded that Mr. Belanger could not purchase his 2004-2007 service at the Seven Hills Charter Public School because he was not employed as a teacher during that time. G.L. c. 71, § 89(y).

 I held a hearing at the Division of Administrative Law Appeals (DALA) on December 19, 2018. The hearing was digitally recorded, and conducted in accordance with the Formal Rules of the Standard Rules of Practice and Procedure (801 CMR 1.01). Before the hearing commenced, I denied Mr. Belanger’s request to have witnesses testify by telephone.

I marked Mr. Belanger’s Statement of Relevant Facts “A” for identification, and marked the System’s Pre-hearing Memorandum “B” for identification. Mr. Belanger testified on his own behalf, the System proffered no witnesses. I admitted nine exhibits (Exhibits 1-9). At the end of the hearing, the System asked to file a Post-Hearing Brief. Mr. Belanger filed a Post-Hearing Memorandum on January 31, 2019. The System filed its Post-Hearing Memorandum on February 4, 2019, whereupon the administrative record closed.

 After carefully reviewing the evidence, I find that Mr. Belanger’s appeal for purchase of prior nonmember service must be dismissed for lack of jurisdiction because he failed to file it within the statutorily prescribed time. *See* G.L. c. 32, § 16(4). Upon examination of the merits of the case, Mr. Belanger’s appeal also fails because the relevant statute provides for the purchase of service of charter school employment only if the member were a teacher. G.L. c. 71, § 89(y). Mr. Belanger was not so employed for the service he seeks to purchase.

FINDINGS OF FACT

Based on the documents admitted into evidence and the testimony presented at the hearing, I make the following findings of fact:

1. Michael Belanger was employed at the Seven Hills Charter School (Seven Hills) from August 11, 2004 until August 11, 2014. (Exhibits 1 and 2.)
2. At the time of his hire, Mr. Belanger lacked a teaching certification from the Department of Elementary and Secondary Education (DESE). It is not required that teachers at charter schools be certified. (Exhibits 1, 2 and 4.)
3. Mr. Belanger began his work at Seven Hills with an apprenticeship as a Junior Academy aide. (Exhibits 3 and 5.)
4. At the time of Mr. Belanger’s apprenticeship, there was a Technology Team at Seven Hills. Jen Roche was the incumbent of the Technology Integration Specialist (TIS) position. The TIS reported to the Community Technology Manager. (Exhibits 5 and 9.)
5. The responsibilities for the TIS position included:
* Working with staff, students and parents to build an understanding of the community standards for the ethical and responsible use of technology
* ... Providing training to families during home rollout
* Providing training and support to staff and administration ..., especially in those areas related to curriculum and instruction
* ... Working with staff to integrate technology resources into lessons across the curriculum
* Work in large groups, small groups and one-on-one with teachers to develop their technical skill and curriculum integration ability
* ... Contribute to the management and maintenance of school websites
1. The position required a bachelor’s degree in education or education technology, teaching experience with children and strong technology skills. Teacher training was preferred and teaching certification was desirable. (Exhibits 6 and 8.)
2. Within the Technology Team, there was also the position of User Support Technician (UST). The UST ensured that the technology was available and in working order for the Seven Hills staff’s everyday work. The UST position requirements were a preference for a bachelor’s degree; platform experience of schools (Mac and/or Windows) and experience, interest or knowledge of a particular technical area (i.e. telecommunications, network security, WAN, LAN, multimedia, help desk). Some experience in a K-12 setting was desirable. (Exhibit 7.)
3. The TIS and UST positions were not provided for in the Seven Hills teaching contract, but in a memorandum or side letter. (Exhibit 9.)
4. When Ms. Roche resigned in late 2004, Mr. Belanger, who already had strong skills in media and video communications, assumed many of the responsibilities of the TIS position on November 28, 2004. While a DESE certification was desired, it was not required for the position. (Exhibits 3, 5, 6, 7 and 9.)
5. Mr. Belanger earned $9,000.00 during his apprenticeship. For his TIS work, he earned $22,342 from November 29, 2004 until June 30, 2005; and earned $36,688 from July 1, 2005 until June 30, 2006. (Exhibits 3, 5, 6, 7 and 9.)
6. During the 2006-2007 year, Mr. Belanger’s duties were split between the TIS role and the UST role. He earned $40,686 from July 1, 2006 until June 30, 2007. (Exhibits 3, 5, 6, 7 and 9.)
7. Matthew Williams, the Technology Director, evaluated Mr. Belanger for the 2004-2005 school year in May 2005. Mr. Williams described the essential job duties for the TIS position as training the teachers on the software, then integrating the software into the classroom. Mr. Williams found that Mr. Belanger was new to the Technology Team, and that the software presented a challenge for him. However, he found that Mr. Williams was moving forward and would assume some of the responsibility of training new teachers in August 2005. Mr. Williams noted that Mr. Belanger had “20 classes a week,” but did state that he was a teacher. Mr. Williams graded Mr. Belanger’s performance with an “approaches expectations” rating. (Exhibit 9.)
8. Krista Osborn, the Principal, evaluated Mr. Belanger for the 2005-2006 school year on June 9, 2006. Under the heading of “Professional Responsibility,” Ms. Osborn noted:

Mike has a perfect attendance record, assists in duties throughout the school and takes initiative not only to keep our systems working and support staff but also to help shape the future of technology at Seven Hills.

Under “Accomplishments,” Ms. Osborn noted:

Mike has worked hard to contribute to the smooth operation of technology in the school. ...He helped support staff and student trainings so that they could take more ownership over technology usage. For example, he helped train lap top cart facilitators, library managers, curriculum based program support, and more.

...Mike created the state tech plan and accompanying grants, set up points of contact and warranty information for hardware, software and licenses, negotiated repairs and warranty contracts, facilitated externships and much more.

(Exhibit 9.)

1. Ms. Osborn graded Mr. Belanger’s performance with an “Exceeds expectations” rating, and noted that he had assumed many additional responsibilities due to a mid-year staffing change. (Exhibit 9.)
2. Sharon DiPasquale evaluated Mr. Belanger for the 2006-2007 school year on June 13, 2007. Under the heading of “Professional Responsibilities and Job Performance,” Ms. DiPasquale noted:

Mike’s job responsibilities this year were split between UST and TIS roles.

...Mike created a manual with detailed information about the department’s warranties, vendor contracts and other important reporting information.

... Early in the school year it was evident Mike struggled with clarification of tech team roles and responsibilities. This appeared to be related to changes that had occurred within the department over the previous year and a half. A lot of energy and time was spent assisting Mike with feeling comfortable that he would not be held accountable for the inactions of others and working on fine tuning job descriptions for each tech team member.

Mike was guided on several occasions to focus on his work and to leave the overall administration and supervision of the individual tech team members to the department coordinator. Mike continued to struggle with this throughout the year and at times would make his concerns known to others that did not need to be involved in these conversations. He did need re-direction through direct conversation with the Coordinator and Superintendent to remediate his behavior and Mike responded immediately and appropriately to correct the behavior.

...Mike created the state tech plan and accompanying grants, set up points of contact and warranty information for hardware, software and licenses, negotiated repairs and warranty contracts, facilitated externships and much more.

(Exhibit 9.)

1. Ms. DiPasquale noted during the roll out of new laptops, the installation of new servers and building wireless capability during the 2006-2007 school year, Mr. Belanger had pitched in and taken on important roles in order for the completion deadlines to be met. Ms. DiPasquale graded Mr. Belanger’s performance with a “Meets expectations” rating. (Exhibit 9.)
2. Under the heading of “Professional Growth,” Ms. DiPasquale advised that Mr. Belanger continue to collaborate as a team member and utilize the appropriate channels of communication for daily concerns and issues; that he take advantage of free networking meetings and other offerings through school vendors; develop integrative technology opportunities with the TIS and the Technology Committee to develop a comprehensive technology curriculum for next school year. (Exhibit 9.)
3. In 2007, Seven Hills updated the TIS job description and negotiated for the position to be included within the teaching contract. (Exhibit 4.)
4. Mr. Belanger earned his DESE certification in time for the 2007-2008 school year and became a member of the Teachers Retirement System. He remained in the TIS position and began teaching technology to Grades K-8 students. As a result of the updated job description, Mr. Belanger reported to both the Technology Manager and the Principal. (Exhibit 4.)
5. On December 3, 2012, Mr. Belanger applied for creditable service for his nonmember employment at Seven Hills. James F. Greene, MTRS Senior Service Representative, reviewed the application. (Exhibits 1 and 3.)
6. On September 4, 2014, Mr. Greene emailed Mary Garland, the Seven Hills Human Resources Administrator, about Mr. Belanger’s status. Mr. Greene inquired whether Mr. Belanger’s TIS title had changed when he became a member of the System. On September 10, 2014, Ms. Garland responded via email that Mr. Belanger started teaching students during the 2007-2008 year; that his job title remained the same; that he taught technology to students in Grades K-8; and that certification was desired but not required for the position. She enclosed the Technology Integration Specialist job description in her email response. Mr. Greene responded with the following question, was Mr. Belanger’s job from 2004-2007 the same after he became a member? Ms. Garland responded that Mr. Belanger was not teaching students from 2004-2007, he began teaching in the 2007-2008 school year. (Exhibit 4.)
7. In a February 24, 2016 Notice, the Sytem denied Mr. Belanger’s request to purchase prior non-membership service for the period before June 1, 2007:

Reason(s) ineligible

We must deny your request to purchase creditable service because a charter school is not a “governmental unit” within the meaning of chapter 32 (the public employee retirement law). It is a “body politic and corporate” with the powers and duties set forth in G.L. c. 71, § 89(y) (the charter school statute), and that statute provides only for the purchase of service as a teacher. According to the Seven Hills Charter School you did not begin teaching students until July of 2007.

(Exhibit 1.)

1. The Notice also enclosed Mr. Belanger’s appeal rights, advising him to appeal within fifteen days of receipt. G.L. c. 32, §16(4). (Exhibit 13.)
2. On March 1, 2016, Mr. Belanger emailed Cynthia Krackovic, the Seven Hills Director of Finance in regard to the System’s denial. In the email, he recounted that he had assumed the TIS position in November 2004, when the incumbent resigned and the essential job duties of the position changed.[[1]](#footnote-1) He asserted that Ms. Garland had made a mistake in informing the System that he had not assumed the changed job duties until 2007. (Exhibit 5.)
3. On March 2, 2016, Ms. Krackovic responded that Ms. Garland would handle the matter. Ms. Garland emailed Mr. Belanger that she needed to clarify her earlier response; she had misspoken due to the fact that Mr. Belanger’s contracts from 2004, 2005 and 2006 listed him as TIS/User Support.[[2]](#footnote-2) Mr. Belanger thanked Ms. Garland for clearing up the matter. (Exhibit 5.)
4. Five days later, on March 7, 2016, Mr. Belanger sent Ms. Krackovic another email. He informed her that he thought that the creditable service purchase issue had been resolved, but had learned otherwise that day from the System. Ms. Krackovic replied that Mr. Belanger was not employed under a teacher contract in 2004, and that his role was not that of a teacher. Mr. Belanger wrote back and confirmed that the TIS role was not pursuant to a teacher contract, but that he was teaching 75% of the time, one of the job requirements. On March 8, 2016, Mr. Belanger informed Ms. Krackovic that Mr. Greene had informed him that Seven Hills had not provided the System with documentation that he had begun teaching before the 2007-2008 school year. On March 15, 2016, Ms. Krackovic informed Mr. Belanger that because his years of service were not pursuant to a teacher contract, they could not be counted in his service purchase. In another email, Ms. Garland elaborated that because Mr. Belanger’s TIS position was subject to a memorandum from 2004-2007, not a teaching contract, it was not a teaching position during that time.[[3]](#footnote-3) Both Ms. Garland and Ms. Krackovic concluded that while Mr. Belanger was assisting teachers and students, he was not teaching. (Exhibit 5.)
5. Two days later on March 17, 2016, Mr. Belanger filed an appeal with DALA via fax/telecopier. Both the cover sheet and the letter were dated March 17, 2016.[[4]](#footnote-4) (Exhibit 2.)
6. Mr. Belanger submitted a February 8, 2018, statement from Ms. Krackovic. The statement provided that Mr. Belanger was responsible for teaching technology classes annually from 2004-2007, and that Ms. Krackovic could provide evaluations documenting his 20 classes per week upon request. Mr. Belanger’s 2004-2005, 2005-2006 and 2006-2007 evaluations were attached. (Exhibit 9.)

CONCLUSION AND ORDER

Mr. Belanger’s appeal is dismissed for lack of jurisdiction, because he failed to file this appeal within fifteen days of receiving notice of the decision complained of.

As a general matter, DALA’s jurisdiction over retirement appeals is determined pursuant to G.L. c. 32, § 16(4), which provides:

... [A]ny person when aggrieved by any action taken or decision of the retirement board or the public employee retirement administration commission rendered, or by the failure of a retirement board or the public employee retirement administration commission to act, may appeal to the contributory retirement appeal board by filing therewith a claim in writing *within fifteen days of notification of such action or decision of the retirement board*... .

(Emphasis added.)

The System informed Mr. Belanger of its denial of his request to purchase prior nonmember service in a letter dated February 24, 2016. The letter enclosed Mr. Belanger’s appeal rights.

DALA has adopted the so-called “postmark rule,” which deems the appeal to be filed as of the date of mailing, as evidenced by a postmark from a United States postal facility. In Massachusetts, the regular course of the mails is presumed. *See Holiver v. Dep’t of Public Works,* [333 Mass. 18](http://sll.gvpi.net/document.php?id=sjcapp:333_mass_18), 21 (1955); *Federal Ins. Co. v. Summers*, 403 F.2d 971, 975 (1968) (Massachusetts law does not require evidence or judicial notice of regularity of mails because it is presumed).

DALA also accepts appeals by fax/telecopier. In the instant case, Mr. Belanger filed his notice of appeal, dated March 17, 2016, with DALA via fax/telecopier.[[5]](#footnote-5) “Papers filed by Electronic Medium shall be deemed filed ... on the date received by the Agency ... during usual business hours ...” 801 C.M.R. § 1.01(4)(b).

If the Notice were mailed on the date it is dated, February 24, 2016, and Mr. Belanger received it the next day, he had fifteen days thereafter to submit his appeal. Fifteen days from February 25, 2016 is March 11, 2016, the last day for the appeal to be postmarked or delivered to DALA within usual business hours. If the February 24, 2016 Notice were mailed the day after which it was dated, February 25, 2016, and Mr. Belanger received it two days later, on February 27, 2016, he had fifteen days to mail his appeal. Fifteen days from February 27, 2016 is March 13, 2016. Because March 13, 2016 fell on a Sunday, Mr. Belanger’s appeal would have had to be postmarked or delivered to DALA within usual business hours by March 14, 2016.

Consequently, Mr. Belanger’s appeal was not filed within the required fifteen-day time limit and was therefore untimely. As a result, DALA is without jurisdiction to hear the appeal. G.L. c. 32, § 16(4). *See Fernandes v. State Bd. of Retirement*, Docket No. CR-17-942 (Mass. Div. of Admin. Law App., Jun. 1, 2018); *Deschesne v. Salem Ret. Bd*., Docket No. CR-14-72 (Mass. Div. of Admin. Law App., Nov. 17, 2017), *aff’d* (Contributory Ret. App. Bd., July 23, 2018).

Although the February 24, 2016 Notice clearly provided Mr. Belanger’s appeal rights, the March 1-15, 2016 electronic mail messages within the administrative record document Mr. Belanger’s belief the Seven Hills staff could rectify the issue on his behalf. He filed his appeal two days after the last email messages from Ms. Krackovic and Ms. Garland, informing him that he had been assisting teachers and students, not actually teaching.

Notwithstanding the lack of jurisdiction, Mr. Belanger asked DALA to examine the merits of the case. In the event the Contributory Retirement Appeals Board finds that I am mistaken upon further review, I now examine the merits of the appeal. I find that even in the absence of the jurisdictional issue, there is no provision under Chapter 32 for Mr. Belanger to purchase his nonmember service.

G.L. c. 71, § 89 (y) provides that charter school teachers shall be subject to the state teacher retirement system. A teacher is any person employed “by one or more school committees or boards of trustees or by any combination of such committees and boards on a basis of not less than halftime service as a teacher, school psychologist, school psychiatrist, school adjustment counsellor or school social worker ... .” G.L. c. 32, § 1. Mr. Belanger did not become eligible for membership in the MTRS in 2007 until he began to teach students at Seven Hills in 2007.

Chapter 32, § 3(5) provides for the purchase of service in a governmental unit other than that by which the member is presently employed. However, a charter school is not a governmental unit, but a “body politic and corporate.” G.L. c. 71, § 89(k).

“Teachers employed by a charter school shall be subject to the state teacher retirement system under chapter 32 and service in a charter school shall be creditable service within the meaning thereof.” G.L. c. 71, § 89(y). In other words, the MTRS does not extend membership to charter school employees unless they are teachers. Mr. Belanger would have been eligible for membership in the MTRS upon his hire in 2004 if Seven Hills had considered him to be a teacher. It is of note that Section 89(y) does not require teacher certification, only that the individual be employed as a teacher.

Mr. Belanger’s appeal would also fail under G.L. c. 32, § 4(1)(p) because a charter school is not a non-public school and Mr. Belanger was not engaged in the teaching of pupils before the 2007-2008 school year.

Due to the Petitioner’s untimely filing, DALA is without jurisdiction to hear the appeal. G.L. c. 32, § 16(4). Accordingly, Michael Boulanger’s appeal is dismissed for lack of jurisdiction.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Angela McConney Scheepers

Administrative Magistrate

DATED: February 8, 2019

1. In the June 9, 2006 evaluation, Ms. Osborn noted that Mr. Belanger had assumed many additional responsibilities due to a mid-year staffing change. (Exhibit 9.) [↑](#footnote-ref-1)
2. Sharon DiPasquale noted in her June 13, 2007 evaluation that Mr. Belanger’s duties for the 2006-2007 school year were split between UST and TIS roles. (Exhibit 9.) [↑](#footnote-ref-2)
3. There are no teaching contracts or memoranda for 2004-2007 in the administrative record. [↑](#footnote-ref-3)
4. The fax/telecopier date and time stamp on Mr. Belanger’s appeal printed out as 3/10/2016, 01:35. Mr. Belanger has not disputed that his appeal was transmitted to DALA on March 17, 2016. (Exhibit 2.) [↑](#footnote-ref-4)
5. *See* DALA Standing Order 13-1. [↑](#footnote-ref-5)