**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.** **Division of Administrative Law Appeals**

**Peter Bien-Aime**,
Petitioner,

v.

**State Board of Retirement**,
Respondent.[1]

Docket No.: CR-26-0049

Dated: June 5, 2026

**MEMORANDUM AND ORDER GRANTING SUMMARY DECISION**

Respondent State Board of Retirement (board) denied petitioner Peter Bien-Aime's application to purchase retirement credit for a period of premembership military service. This is Mr. Bien-Aime's appeal from that decision. The board has filed a motion for summary decision, 801 C.M.R. § 1.01(7)(h), which Mr. Bien-Aime has opposed.

*I*

A public employee's tally of creditable service is one of the determinants of the employee's retirement benefits. G.L. c. 32, § 5(2)(a). As a general rule, employees are credited only for periods during which they worked for Massachusetts governmental units and were members of Massachusetts public retirement systems. *Id.* § 4(1)(a).

Scattered exceptions credit employees for premembership work. One such exception allows veterans to obtain up to four years' worth of credit for "active service in the armed services." G.L. c. 32, § 4(1)(h). To qualify, a veteran must make "makeup" contributions to the

[1] This appeal was previously consolidated with *Speakman v. State Bd. of Ret.*, No. CR-26-0020, and other matters. It is hereby severed.

pertinent board within a statutorily prescribed period. *See* St. 1996, c. 71, §§ 2-3; St. 2002, c. 468, § 2; St. 2024, c. 178, § 18. Mr. Bien-Aime does not claim to have met his original § 4(1)(h) deadline.

The Legislature adopted an array of measures related to veterans in the Act Honoring, Empowering, and Recognizing our Servicemembers and Veterans (HERO Act), St. 2024, c. 178. One provision of the statute says:

> [A]ny . . . veteran who failed to make the purchase authorized in [§ 4(1)(h)] shall be given a 1-time opportunity to apply to the retirement system to make said purchase within 1 year from [August 8, 2024].

*Id.* § 53. The same section adds:

> Each retirement system shall provide written notice to all members in service of their potential eligibility for this purchase within 90 days of the effective date of this act.

*Id.*

One month after the HERO Act took effect, in September 2024, the board undertook a large-scale effort to mail a letter to its members. The letter stated in part:

> The HERO Act . . . may be an opportunity for members . . . who are veterans to purchase creditable service for their military service . . . .
>
> If you are a veteran and an active member . . . you have up to one year from the date of the Act to purchase eligible creditable military service. . . . That means active, vested . . . members only have until August 8, 2025, to take advantage of this special provision to purchase eligible creditable military service.

Toward its tail end, the letter added:

> If you are a current or former service member in the National Guard or a Reservist, your eligibility and ability to purchase creditable service for such time may be different. Please contact our office to discuss purchasing the time. Please visit our website . . . to view the HERO Act in its entirety . . . .

*II*

One week after the HERO Act's deadline, on August 15, 2025, Mr. Bien-Aime emailed the board a credit-purchase application. The theory of the board's motion is that the application is doomed by untimeliness. Mr. Bien-Aime offers essentially three contrary theories.

*A*

The execution date written on Mr. Bien-Aime's application form is not the same date on which the form was filed with the board, but rather one week earlier, i.e., August 8, 2025. With the record taken in the light most favorable to Mr. Bien-Aime, he possesses a reasonable expectation of establishing that he in fact wrote and signed his form on that date, i.e., on the statutory deadline. *See generally Caitlin v. Board of Reg. of Architects*, 414 Mass. 1, 5-7 (1992); *Goudreau v. Nikas*, 98 Mass. App. Ct. 266, 269-70 (2020).

Mr. Bien-Aime's principal theory relies on this factual point: in his view, he "applied" to make his purchase as soon as he signed his form, still within the statutory deadline. The argument is not meritorious. To "apply" is to "make a formal request." *Black's Law Dictionary* 120 (10th ed. 2014). The request at issue here must be posed "to the retirement system." St. 2024, c. 178, § 53. A member who has written out an application form has not asked the board to do anything until he or she has brought the form to the board's attention. Plus, from a practical perspective, the theory that applications are effective as soon as they are written would entail exceedingly implausible consequences—for example, the consequence that a

member who signs and immediately tears up an application form is obligated to complete a purchase that the board knows nothing about.[2]

*B*

Mr. Bien-Aime's next theory is that he did not receive his copy of the board's September 2024 letter. He says: "Petitioner became aware of the . . . buyback deadline on Wednesday, August 6, 2025 [i.e., two days before the statutory deadline] . . . . August 6, 2025 was, to Petitioner's knowledge and belief, the first time he received [a] communication indicating that a firm HERO Act buyback application deadline existed . . . ."[3]

In cases under most provisions of the retirement law, it makes no analytical difference whether a member has received personalized notice about his or her entitlements. *See Awad v. Hampshire Cty. Ret. Bd.*, No. CR-08-621, 2014 WL 13121791, at *3 (Contributory Ret. App. Bd. Dec. 19, 2014). *See also Clothier v. Teachers' Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010). It is convenient to assume for the sake of argument that St. 2024, c. 178, § 53, is an outlier—i.e., that its deadline is contingent on each veteran's receipt of "written notice . . . of . . . potential eligibility."[4] Even so, Mr. Bien-Aime has no reasonable expectation of establishing that he did not receive the board's September 2024 letter. In a carefully detailed affidavit, the board

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[2] Also, in many cases analogous to the current one, boards and appellate tribunals would face the severe evidentiary challenge of determining when exactly a member privately executed an application form.

[3] Mr. Bien-Aime's account of how he did eventually learn about the HERO Act's deadline is not material here.

[4] On the one hand, the requirement for "written notice" distinguishes St. 2024, c. 178, § 53, from most statutes. On the other, the Legislature knows how to tie a deadline explicitly to a member's receipt of notice. *See In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2023 WL 5332723, at *1 (Div. Admin. Law App. Aug. 7, 2023) (collecting statutes).

describes the process through which a vendor mailed letters to the board's members at the addresses then appearing in the board's records. *See Dwyer v. Massachusetts Teachers' Ret. Syst.*, No. CR-23-459, 2024 WL 4345195, at *4-5 (Div. Admin. Law App. Sept. 13, 2024).[5] If the address that Mr. Bien-Aime gave the board was no longer current in September 2024—as Mr. Bien-Aime hypothesizes—the board would nonetheless be viewed as having providing the requisite "notice." *See Roldan-Flores v. Massachusetts Teachers' Ret. Syst.*, No. CR-18-311, 2020 WL 14009727, at *1 (Contributory Ret. App. Bd. Dec. 10, 2020). In all the circumstances, Mr. Bien-Aime's conclusory and qualified assertion that he first heard of the HERO Act's deadline "[on] August 6, 2025 . . . to [his] knowledge and belief," is too "vague, non-specific and general" to generate a genuine factual dispute. *See Benson v. Massachusetts Gen. Hosp.*, 49 Mass. App. Ct. 530, 533 n.3 (2000). *See also Ng Bros. Const., Inc. v. Cranney*, 436 Mass. 638, 648 (2002).

*C*

Mr. Bien-Aime's final contention is that the board's letter created the potential for confusion by stating that the entitlements of members serving in the National Guard "may be different." Mr. Bien-Aime reports that he is such a member; he argues that the board's language tended to imply that members serving in the National Guard would not need to make their applications by the usual, August 8, 2025 deadline.

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[5] If Mr. Bien-Aime believes that a cross-examination of the board's affiant would yield material evidence, he may move for reconsideration on that basis, outlining the testimony that he expects in good faith to elicit. *See Barra v. Department of Early Educ. & Care*, No. OC-25-0693, 2026 WL 1256779, at *2 (Div. Admin. Law App. April 28, 2026) (collecting cases). *See also Massachusetts Outdoor Advert. Council v. Outdoor Advert. Bd.*, 9 Mass. App. Ct. 775, 787 (1980).

To the extent that Mr. Bien-Aime is seeking relief based on his reliance on the board's representations, the argument is a non-starter. "[Tribunals] cannot estop the conduct of a governmental officer or agency, as they might a private actor, because the public interest in the lawful work of the governmental actor overrides the unfairness or injury to the private complainant." *Moynihan v. Contributory Ret. Appeal Bd.*, 104 Mass. App. Ct. 1108, slip op. at 7-8 (2024) (unpublished memorandum opinion). *See also Clothier*, 78 Mass. App. Ct. at 146. It therefore makes no practical difference that Mr. Bien-Aime appears to be claiming simultaneously to have relied upon and not to have received the same letter.

Alternatively, perhaps Mr. Bien-Aime's theory is that the board's "written notice" under St. 2024, c. 178, § 53, was deficient in light of the language of the board's letter. Again assuming for the sake of argument that proper notice is a prerequisite to the effectiveness of the HERO ACT's deadline, there was nothing wrong with the language that Mr. Bien-Aime critiques. It is altogether true that the eligibility of service in the National Guard for purchase under G.L. c. 32, § 4(1)(s), "may be different."[6] It was prudent for the board to say so, and to invite pertinent members to "contact [the board's] office." Commonsensically read, the board's letter meant only what it said: that members with service in the National Guard "may" have different entitlements, and should conduct further inquiries.

[6] The statute says, in part: "Creditable service time . . . may be applied toward retirement on a ratio of 5 years of national guard service . . . substitutable for each year of active service."

*III*

In view of the foregoing, it is hereby ORDERED that the board's motion for summary decision is ALLOWED. Summary decision is hereby entered to the effect that the board's decision is AFFIRMED.

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
Division of Administrative Law Appeals