

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

ROBIN BLATT,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-20-199

DECISION

The petitioner-appellant Robin Blatt appeals from a decision of the Division of Administrative Law Appeals (DALA) dismissing her appeal of a decision of the State Board of Retirement (Board) denying her application to purchase credit pursuant to G.L. c. 32, § 4(1)(s) for a period of service as a contract employee. As grounds for dismissal, the DALA decision cited 801 CMR § 1.01(7)(g)(3) and held that Ms. Blatt had failed to state a claim upon which relief could be granted under G.L. c. 32, § 4(1)(s). The magistrate also opined on Ms. Blatt's potential eligibility to purchase service under G.L. c. 32, § 3(3) or (5). The DALA decision is dated August 26, 2022. Ms. Blatt filed a timely appeal to us.

After reviewing the record and the arguments presented by both parties, we affirm the DALA decision on the narrow grounds that Ms. Blatt failed to state a claim upon which relief could be granted under G.L. c. 32, § 4(1)(s). We disagree

with and reject that portion of the DALA decision that discusses Ms. Blatt's eligibility to purchase service under G.L. c. 32, § 3(3) or (5). ***Affirm.***

Background. On December 23, 2019, Ms. Blatt submitted to the Board a form titled "Contract Service Buyback Form (M.G.L. c. 32, § 4(1)(s))" in which she sought to purchase contract service for the period of April 4, 1983 to June 22, 1985. Ms. Blatt wrote on the form that she had performed the contract service for the Massachusetts Department of Public Health (DPH).

By letter dated April 2, 2020, the Board, through its Executive Director, notified Ms. Blatt that it was denying her request because the right to purchase contract service through G.L. c. 32, § 4(1)(s) is reserved to "members in service" (*i.e.*, persons actively employed by the Commonwealth), and Ms. Blatt had last worked for DPH in 2004. The Board noted that the right to purchase contract service resulted from 2006 legislation (Chapter 161 of the Acts of 2006) and did not exist when Ms. Blatt was employed by DPH. Ms. Blatt timely appealed the Board's April 2, 2020 letter.

On January 26, 2022, DALA issued an Order to Show Cause why Ms. Blatt's appeal should not be dismissed for failure to state a claim upon which relief should be granted. DALA summarized the Board's denial letter and ordered Ms. Blatt "to provide sufficient evidence in writing by March 10, 2022 that she is eligible to purchase her contract service."

Ms. Blatt timely submitted a response to the Order to Show Cause, along with five appendices containing dozens of exhibits. In her response, Ms. Blatt stated

that she left public service in June 2004 and that she did not dispute that she was not an active member in service when she submitted the contract buyback form on December 23, 2019.¹ However, Ms. Blatt argued that for various reasons, she nonetheless should be allowed to purchase her contract service.²

On August 26, 2022, DALA dismissed Ms. Blatt's appeal pursuant to 801 CMR § 1.01(7)(g)(3) for failure to state a claim upon which relief could be granted, stating that Ms. Blatt was ineligible to purchase contract service under G.L. c. 32, § 4(1)(s) because she was not a member in service when she made her purchase request. The DALA magistrate also noted that Ms. Blatt had asserted that she had reasonably relied on communications from the Board suggesting that she could purchase her contract service. In response, the magistrate stated that under Massachusetts law, errors of government officials cannot alter statutory obligations and entitlements.³

Finally, the magistrate observed that Ms. Blatt suggested in her response to the Order to Show Cause that she might have been entitled to retirement system membership while originally working for the Commonwealth, which the magistrate said might have made her "eligible to purchase credit for that period through the buyback and 'late entry' provisions of G.L. c. 32, § 3(3)(5)."⁴ However, the magistrate opined that Ms. Blatt could not have entered the retirement system

¹ Blatt Response, pp. 11 and 27.

² We address Ms. Blatt's arguments in the Discussion section of this decision.

³ DALA Decision, p. 2.

⁴ DALA Decision, pp. 2-3.

during her time as a contractor because the documents she submitted in response to the Order to Show Cause showed that she was an “03” employee, and the retirement law excludes from its definition of employee “any person whose compensation . . . is derived from the subsidiary account 03.”⁵ See G.L. c. 32, § 1.

Ms. Blatt timely appealed the DALA decision.

Discussion. In her appeal, Ms. Blatt does not contest the magistrate’s ruling that she failed to state a claim upon which relief could be granted under G.L. c. 32, § 4(1)(s).⁶ Rather, Ms. Blatt makes the following two objections: (1) DALA failed to consider that Ms. Blatt’s situation involved an enrollment issue, not a buyback issue, and that there was an error subject to correction under G.L. c. 32, § 20(5)(c)(2); and (2) because DALA did not hold a hearing, it failed to consider relevant evidence, and its ruling that Ms. Blatt was not entitled to purchase time

⁵ DALA Decision, pp. 2-3.

⁶ We agree with DALA that Ms. Blatt’s factual allegations, including those made in response to the Order to Show Cause, failed to state a claim upon which relief could be granted under G.L. c. 32, § 4(1)(s). However, we note that in the January 26, 2022 Order to Show Cause, the magistrate ordered Ms. Blatt “to provide sufficient *evidence* in writing by March 10, 2022 that she is eligible to purchase her prior contract service.” (Emphasis added). We disagree that Ms. Blatt needed to provide evidence to avoid the dismissal of her appeal pursuant to 801 CMR 1.01(7)(g)(3). Rather, at that stage in the appeal process, Ms. Blatt needed only to make factual allegations that plausibly suggested an entitlement to relief. See, e.g., *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 676 (2011). Because she did not do so, we agree that dismissal was proper under 801 CMR 1.01(7)(g)(3). We also agree with the magistrate’s statement, made in response to Ms. Blatt’s allegations that Board employees had told her she could purchase past contract service, that errors of government officials cannot alter statutory obligations and entitlements. E.g., *Clothier v. Teachers’ Retirement Bd.*, 78 Mass. App. Ct. 143, 146 (2010).

pursuant to G.L. c. 32, § 3(3) and 3(5) was therefore not based on substantial evidence and should be overturned. We address each of these objections below.

Objection Concerning DALA's Treatment of Ms. Blatt's Situation as a Buyback Issue

Ms. Blatt's first objection is that DALA failed to consider that her situation involved an enrollment issue, not a buyback issue. Ms. Blatt argues that DPH's failure to enroll her in the retirement system as of her start date was an error subject to correction under G.L. c. 32, § 20(5)(c)(2). In support of her argument, Ms. Blatt alleges, as she did in her response to the Order to Show Cause, that she was hired as a full-time DPH employee in June 1985 and that at the time of her hiring, she completed various forms to obtain credit for her prior contract service. Ms. Blatt alleges that neither the Board nor DPH ever notified her that her contract service would not be included in her retirement benefit calculations. Ms. Blatt points to two documents in the record in support of her position: (1) a State Board of Retirement enrollment form for Ms. Blatt that lists "Mass Dept. Public Health, April 1, 1983 – June 24, 1985" as her former service for the Commonwealth; and (2) a document titled "Employee Validation Statement" that lists Ms. Blatt's date of entry into state service as April 4, 1983.⁷

⁷ Ms. Blatt included these documents in her response to the Order to Show Cause. In her appeal to CRAB, Ms. Blatt also cites an attestation by Sally Fogerty (Fogerty Attestation), who said she oversaw the program in which Ms. Blatt worked at DPH. We did not consider the Fogerty Attestation because Ms. Blatt did not submit it with her response to the Order to Show Cause but rather submitted it solely to CRAB. In any event, any factual statements in the Fogerty Attestation would not affect our conclusion that DALA did not commit error by not considering Ms. Blatt's

While we are sympathetic to Ms. Blatt's arguments, we conclude that DALA committed no error by not treating Ms. Blatt's appeal as concerning an enrollment issue subject to correction under G.L. c. 32, § 20(5)(c)(2). Under the Massachusetts public retirement statute, DALA and CRAB only have authority to adjudicate appeals from decisions or actions of retirement boards; they do not consider disputes in the first instance.⁸ G.L. c. 32, § 16(4). The Board decision appealed by Ms. Blatt solely addresses her request to buy back contract service under G.L. c. 32, § 4(1)(s). It does not mention any request by Ms. Blatt to correct an enrollment error pursuant to G.L. c. 32, § 20(5)(c)(2) with respect to her contract work. As a result, DALA did not err by not treating Ms. Blatt's appeal as concerning an enrollment error subject to correction under G.L. c. 32, § 20(5)(c)(2). Rather, DALA would have erred had it enlarged the scope of Ms. Blatt's appeal by considering a claim that was not part of the Board decision on appeal. Should Ms. Blatt believe that the Board made an enrollment error that is subject to correction under G.L. c. 32, § 20(5)(c)(2), she should first take the issue up with the Board and obtain an appealable decision on the matter. See *Barnstable County Retirement Board v. Public Employee Retirement Administration Commission*, CR-07-0163 (CRAB Feb. 17, 2012)(an appealable decision of a retirement board is one that (1) expressly informs the parties that it is an appealable decision and (2) gives notice of the parties' right to

appeal to concern an enrollment issue subject to correction under G.L. c. 32, § 20(5)(c)(2).

⁸ DALA and CRAB also adjudicate appeals based on retirement boards' failures to act within a specified period of time. G.L. c. 32, § 16(4).

appeal, including the time for appeal and to whom the appeal should be sent, pursuant to G.L. c. 32, § 16(4).)

Objection Concerning Lack of a Hearing.

Ms. Blatt also objects to the DALA decision on the grounds that it was not based on substantial evidence because DALA did not hold a hearing. Ms. Blatt states that because DALA did not hold a hearing, it did not receive evidence that she was not paid from subsidiary account 03. Ms. Blatt argues that as a result, DALA's conclusion that Ms. Blatt was not entitled to purchase service pursuant to G.L. c. 32, § 3(3) or 3(5) because she was an 03 employee was not based on substantial evidence. In addition, Ms. Blatt states that she did not waive her right to a hearing pursuant to 801 CMR 1.01(10)(c).

We reject this objection and conclude that Ms. Blatt was not entitled to a hearing on her eligibility to purchase service pursuant to G.L. c. 32, § 3(3) or 3(5), but we also disagree with and reject the DALA decision's treatment of this issue. As explained above, the Board decision on appeal solely concerned Ms. Blatt's request to purchase prior contract service under G.L. c. 32, § 4(1)(s). The magistrate raised the possibility of Ms. Blatt's purchase of service under G.L. c. 32, § 3(3) and 3(5) on his own, only to swat it down.⁹ Because there was no appealable decision by the Board concerning Ms. Blatt's possible purchase of service under G.L. c. 32, § 3(3)

⁹ Ms. Blatt also did not cite these provisions in her response to the Order to Show Cause.

and 3(5), she had no right to a hearing at this juncture on that issue, and it would have been error for DALA to conduct one.¹⁰

Finally, Ms. Blatt's statement that she did not waive a hearing under 801 CMR 1.01(10)(c) does not affect our decision. That provision, which provides that a party may elect to waive a hearing and submit a case upon written submissions, applies when the magistrate will adjudicate an appeal that is properly before DALA by considering evidence and making findings of fact. It does not apply where, as here, DALA or CRAB is asked to enlarge an appeal beyond the scope of the underlying retirement board decision.¹¹

Our decision should not diminish the years of service that Ms. Blatt provided to the Commonwealth and is based on the application of the regulations and retirement laws as stated above.

¹⁰ We add that if there had been a claim for relief under G.L. c. 32, § 3(3) or 3(5) properly before DALA (*i.e.*, because Ms. Blatt had obtained an appealable decision from the Board on the matter), it would have been error for the magistrate to dismiss it pursuant to 801 CMR 1.01(7)(g)(3) because of Ms. Blatt's alleged status as an 03 employee.¹⁰ The magistrate concluded that Ms. Blatt did not state a claim under G.L. c. 32, § 3(3) or 3(5) because the documents she submitted in her response to the Order to Show Cause referred to her original employment status as "03," which, if accurate, would mean that she was not an "employee" eligible for retirement system membership under G.L. c. 32, § 1. In Ms. Blatt's response to the Order to Show Cause, she cast doubt on the accuracy of the "03" notation and suggested that her position had been misclassified. The magistrate should not have assumed the truth of the "03" notation in the documents but instead should have identified Ms. Blatt' 03 status as a disputed fact on which Ms. Blatt was entitled to be heard.

¹¹ The provision also does not apply where, as here, the magistrate resolves a dispute by dismissing an appeal pursuant to 801 CMR 1.01(7)(g)(3) for failure to state claim upon which relief can be granted. When a case is dismissed under 801 CMR 1.01(7)(g)(3), the magistrate does not consider the evidence and make findings of fact but instead evaluates the legal sufficiency of the party's claim.

Conclusion. We affirm the DALA decision on the narrow grounds that Ms. Blatt's appeal of the Board's denial of her request to purchase prior contract service pursuant G.L. c. 32, § 4(1)(s) was correctly dismissed under 801 CMR 1.01(7)(g)(3) for failure to state a claim upon which relief can be granted. This dismissal is without prejudice with respect to any claims Ms. Blatt might have under G.L. c. 32, § 20(5)(c)(2) or G.L. c. 32, § 3(3) or 3(5) for which she has not obtained an appealable decision from the Board.¹² **Affirm.**

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

Did not participate

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¹² We express no opinion on the viability of any such claims, as they must first be addressed by the Board, and if Ms. Blatt appeals, by DALA.

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Date: February 19, 2026