COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

CHRISTINA BOUCHARD *Petitioner*	:	Docket No. CR-22-0585
v.	:	Date: November 29, 2024
MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM, *Respondent*	:	

Appearances:

For Petitioner: Richard Mullane, Esq.
For Respondent: Ashley Freeman, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

Petitioner applied to purchase a full year of prior out-of-state teaching service from 2006-2007. MTRS allowed her to purchase the service. However, based on some conflicting records, it did not credit her with a full year because there were days she did not work. The Petitioner's only evidence to the contrary is her testimony. While she was a credible witness, there was much she could not remember, and her testimony is not enough to fill in the missing gaps. Accordingly, MTRS's calculation should stand.

DECISION

The Petitioner, Christina Bouchard, timely appeals a decision by the Massachusetts Teacher's Retirement System ("MTRS") that she is not entitled to a full year of creditable service for her time spent teaching in Hawaii from 2006-2007. I held a hearing via Webex on November 5, 2024. Ms. Bouchard was the only witness. I entered exhibits 1-13 into evidence. The parties made closing statements at the end of the hearing at which point I closed the administrative record.

FINDINGS OF FACT

1. The Petitioner is an active member of the MTRS. (Testimony; ex. 7.)

2. Before becoming a member of MTRS, she taught in Hawaii during the 2006-2007 school year. In 2013, she applied to purchase this prior service, which MTRS allowed. It sent her an invoice which she paid. (Testimony; exs. 4 & 8.)

3. The Petitioner was initially given a full year of creditable service. However, in 2022, MTRS discovered a mistake in its calculation. MTRS sent the Petitioner a letter saying she would receive only 0.9312 years of creditable service because it found she worked only 176 out of 189 days during the 2006-07 school year. (Ex. 1.)

4. This was based on a verification letter submitted as part of the Petitioner's purchase application in November 2012. Part II of the application was filled out by a payroll supervisor from the Department of Education in Hawaii. The supervisor attached a verification signed by a personnel specialist in that Department's human resources office who indicated the Petitioner was "employed" during 176 out of 189 "school days" and was paid $41,689.41. The verification also added that she was on "leave without pay from 6/4/07 to 6/5/07." (Ex. 5.)

5. This was one of a few possible sources of verification.

6. In a prior application in 2008,[1] Part II of the Petitioner's application was filled out by the school secretary. The secretary wrote that the Petitioner worked 164 out of 195 days and was paid only $29,636.07. (Ex. 4.)

7. Also, a 2014 letter from a personnel specialist (different from the one who filled out the application in 2012) confirmed the Petitioner's employment for that year but without any

[1] There were some issues that arose with this application (unrelated to this appeal) so the Petitioner resubmitted her application with new information in 2012.

information about specific days worked or salary earned. The letter did add that the Petitioner was on leave without pay from June 4, 2007 to June 6, 2007. (Ex. 12.)

8. MTRS relied on the information provided by the payroll supervisor in November 2012 because that was the "best piece of information to credit [the Petitioner]." (Ex. 2.)

9. At the hearing, the Petitioner testified that she did work a full year. She recalled taking the full allotment of sick days to which she was entitled, but did not know exactly how many there were or when she took them. She knew it was less than 15, because it was less than what she was entitled to in Massachusetts. She also remembered "paperwork" that set this out. (Testimony.)

10. She could not recall why she had a few days of leave without pay. However, she did not dispute that happened, particularly because it was mentioned in letters from Hawaii officials. (Testimony.)

11. She believed she worked under a contract but was not certain. Her only memory of a contract was reading something about the number of sick days to which she was entitled. But again, she also referred to this as "paperwork." (Testimony.)

DISCUSSION

"[I]n all issues determining entitlement[,] and absent statutory presumptions, the Petitioner bears the burden of proof." *Goldstein v. MTRS*, No. CR-03-176, at *4 (CRAB Feb. 4, 2005); *Byrne v. MTRS*., CR-15-609, 2018 WL 1473269 (DALA Jan. 26, 2018) ("The Petitioner has the burden of proving by a preponderance of the evidence that the MTRS has applied the law and or its regulations incorrectly or has been culpable in perpetrating a correctable administrative mistake").

The parties agree the Petitioner is entitled to credit for the time she worked; they simply disagree as to how many days that is in this case. Prior to the hearing, the Petitioner argued she was entitled to one full year. After the hearing, she conceded she was not entitled to the credit for the

days of unpaid leave she took that year. But she still argues she should be entitled to credit for the remaining days. Her theory is that the days not credited by Hawaii were the ones in which she took sick leave.

On the other hand, MTRS argues that the Petitioner had the burden of producing documents which MTRS would accept, and which clearly indicated how many days she worked. G.L. c. 32, § 3(4) ("Such member shall furnish the board with such information as it shall require to determine the amount to be paid and the credit to be allowed under this subdivision"). It chose to credit the November 2012 verification form because it was filled out by a person who presumably had the best knowledge, a payroll supervisor, and it was the most detailed.

It is surprising that Hawaii's information is so unclear. For example, the secretary of the school said the Petitioner worked 164 out of 195 days during the 2006-07 school year, but the payroll specialist said she was "employed" 176 out of 189 "school days." One would think the same school system would be consistent as to how many days a teacher worked, let alone how many school days there were in a school year. Moreover, submissions by two different personnel specialists in the office of human resources had different dates for unpaid leave in 2006-07: one said it was from June 4 to June 5 while the other said it was from June 4 to June 6. Again, one would think the same office would be able to produce consistent dates from presumably one set of records.

The Petitioner was a credible witness. I did not perceive that she was trying to mislead me. In fact, she was very careful to explain what she could or could not remember and why. Unfortunately for her, she did not sufficiently remember enough for me to credit her testimony that the days which were excluded by Hawaii's calculation were paid sick days. That is certainly a possibility, but not enough of one based on the records in evidence. For example, I would not

expect a system that allows an employee paid sick days to then say the employee did not "work" or was not "employed" on the days they were on paid sick leave.

The Petitioner's memory that she might have worked under a contract, while plausible, is likewise not enough for me to find that she did work under a contract. At the very least, it is not enough for me to find she worked under a contract that provided her a specific allotment of paid sick leave. The record leaves open other possibilities; for example, the Petitioner may have been entitled to unpaid sick days, or the policy regarding sick days was not part of a contract.

Then there are the conflicting notations that she took either two or three days of unpaid leave. Even though the Petitioner does not now dispute it, she could not remember why she took that time off or how many days it lasted. Although she concedes she is not entitled to credit for that time, I do not know if it was factored into the estimates of the number of days she worked. In any event, it is another ambiguity that cuts against her.

MTRS's decision to use the calculation it did was reasonable given the conflicting records it had. It even adopted the approach most favorable to the Petitioner. The Petitioner has not proven that MTRS's reliance on those records was in error.

CONCLUSION AND ORDER

MTRS's calculation of the Petitioner's creditable service is **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate