

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Matthew Capeless,
Petitioner,

No. CR-24-0243

Dated: November 15, 2024

v.

**Massachusetts Teachers' Retirement
System,**
Respondent.

Appearances:

For Petitioner: Matthew Capeless (pro se)

For Respondent: Ashley Freeman, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner is a teacher who taught at a non-public school before he became a public employee. A preponderance of the evidence establishes that, for several years of his tenure at the non-public school: (a) the petitioner did not participate in an employer-funded retirement plan; and (b) all of the petitioner's students received state funding toward their tuition. The petitioner is entitled to purchase retirement credit for those years.

DECISION

Petitioner Matthew Capeless appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) denying his application to purchase retirement credit for a period of service in a non-public school. A scheduling order submitted the appeal on the papers under standard rule 10(c).¹ Neither party objected to that order or identified potential witnesses.

I admit into evidence exhibits marked 1-7 in DALA's case file.²

¹ In accordance with G.L. c. 30A, § 9, the "standard rules" in this context are the provisions of 801 C.M.R. § 1.01.

² Exhibit 1 was offered by Mr. Capeless. Exhibit 7 is the envelope in which he filed his appeal. Exhibits 2-6 were offered by MTRS.

Findings of Fact

I find the following facts.

1. Mr. Capeless is a teacher. From August 2015 to August 2021, he taught special education students at the Springdale Education Center (Springdale). Springdale is a non-public school in Chicopee. (Exhibits 1, 4.)

2. By 2023, Mr. Capeless had become an employee of a public school and a member of MTRS. He presented MTRS with an application to purchase retirement credit for his years at Springdale. (Exhibit 4.)

3. Mr. Capeless indicated on his application form that he had participated in Springdale's retirement plan. On the pages of the form addressed to the school, in response to questions about the school's retirement contributions on Mr. Capeless's behalf, the school's CEO wrote: "[T]otal \$2,975.19 for all years." In a more recent letter, the CEO explained that Mr. Capeless "did not participate [in the plan] for the entirety of his tenure," but rather only "from April 8, 2020 through the end of his employment." Consistent with this information, on Mr. Capeless's tax documents, the box "Retirement plan" is checked on forms relating to 2020 and 2021 but not on forms relating to 2016-2019. (Exhibits 4, 6.)

4. A printout from the interface of Mr. Capeless's retirement plan identifies Springdale's total contributions to the plan as the same figure provided by the CEO. Mr. Capeless's own contributions have totaled \$16,251.13, the equivalent of approximately 1.25 years' worth of contributions at Mr. Capeless's current contribution rate and recent salaries. (Exhibits 4, 5.)³

³ Mr. Capeless's contribution rate is now 20%. Twenty percent of his full 2021 salary, \$65,500, equals \$13,100. Twenty percent of 0.25 of his 2020 salary, \$62,000, equals another \$3,100. (Exhibits 4, 5.)

5. According to Mr. Capeless's application form, his students at Springdale "were referred [to the school] from their home districts"; their hometowns were "Holyoke, Springfield, Greenfield, Palmer, Pittsfield, Chicopee . . ."; and their tuition "was funded by money from the students' school districts and possibly other state funds." (Exhibit 4.)

6. According to Springdale's part of the form, when Mr. Capeless worked at the school, the percentage of students who "came from other states" was zero; the percentage of students who "paid private tuition" was also zero; and "all of the students taught by [Mr. Capeless] receive[d] at least partial tuition from the Commonwealth of Massachusetts or a Massachusetts public school district." (Exhibit 4.)

7. MTRS denied Mr. Capeless's application in a letter dated March 15, 2024, stating: "[I]t has been determined that there was a retirement plan in place . . ." Mr. Capeless appealed in a mailing postmarked April 2, 2024. (Exhibits 2, 7.)

Analysis

An appeal from a decision of a retirement board must be taken "within fifteen days." G.L. c. 32, § 16(4). That period begins to run when the member is "notified" of the decision, i.e., typically when it is delivered to his or her home. *See Bailey v. State Bd. of Ret.*, No. CR-07-724, 2012 WL 13406339, at *2 (CRAB Nov. 16, 2012). A notice of appeal is deemed filed as of the date appearing in its postmark. *See* standard rule 4(1).

DALA's jurisdiction under § 16(4) is limited to timely filed appeals. *See Lambert v. Massachusetts Teachers' Ret. Syst.*, No. CR-09-74, 2012 WL 13406355, at *2 (CRAB Feb. 17, 2012). A tribunal must consider and resolve any potential jurisdictional problems whether or not the parties have raised them. *See Flynn v. Contributory Ret. Appeal Bd.*, 17 Mass. App. Ct. 668, 670 (1984).

Mr. Capeless's appeal was timely. Mailings are presumed to have been delivered three days after being deposited in the mail. *See* standard rule 4(c). No record evidence rebuts that presumption here. As a result, even if MTRS mailed out its decision immediately upon preparing it, Mr. Capeless would have been notified of the decision on March 18, 2024. His appeal was postmarked 15 days later.

Turning to the merits, the retirement benefits of a Massachusetts public employee are derived in part from the employee's term of "creditable service." G.L. c. 32, § 5(2)(a). Creditable periods are ordinarily those when the employee worked for a state governmental unit while maintaining membership in a public retirement system. *Id.* § 4(1)(a). The question here is whether Mr. Capeless may also "purchase" credit for his years at Springdale, when his employer was a non-public entity and he had not yet joined MTRS.

The pertinent statute is G.L. c. 32, § 4(1)(p), which authorizes purchases of retirement credit by a member "who was previously engaged in teaching pupils in any non-public school in the commonwealth." Purchases under this statute are permissible only if "the tuition of all such pupils taught was financed in part or in full by the commonwealth." *Id.* A proviso to the statute adds that "no credit shall be allowed . . . for any service for which the member shall be entitled to receive a retirement allowance, annuity or pension from any other source." *Id.*

MTRS's decision focused on the latter proviso, which seeks "to prevent double-dipping by [employees] receiving two employer-funded retirement benefits for the same work." *Richmond v. Massachusetts Teachers' Ret. Syst.*, No. CR-16-102, at *7 (DALA Feb. 15, 2019). The proviso is triggered specifically when a retirement program was funded by "any other source," § 4(1)(p), i.e., any "source other than the applicant," *Richmond, supra*, at *7.

The information originally provided to MTRS by Springdale's CEO referenced the "total" of the school's retirement contributions on Mr. Capeless's behalf "for all years." MTRS apparently interpreted that statement as suggesting that the school made small contributions during each year of Mr. Capeless's tenure. But that misunderstanding was cleared up by the CEO's subsequent letter, which explained that Mr. Capeless joined the retirement plan only in April 2020. The accuracy of the CEO's clarification is evidenced by the details appearing in Mr. Capeless's tax forms and in the printout from the plan's interface.

In its memorandum on appeal, MTRS also suggests that some of Mr. Capeless's students at Springdale may not have had their tuition "financed in part or in full by the commonwealth." § 4(1)(p). In support of this theory, MTRS says that "Springdale enrolls students from Massachusetts as well as the surrounding states." MTRS does not support this statement with any record evidence. To the extent that its staff members possess their own information about Springdale's student population, "[i]t is impermissible . . . to rely on extra-record evidence such as this." *Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 162 (2023). See G.L. c. 30A, § 11(4), (5). The pertinent record evidence consists of the application-form answers of Mr. Capeless and Springdale's CEO. Both individuals wrote that Mr. Capeless's students all live in Massachusetts and all received state funding toward their tuition. MTRS does not identify any reasons to doubt these statements.

Conclusion and Order

In view of the foregoing, MTRS's decision is AFFIRMED as to the period beginning on April 8, 2020, REVERSED as to the period before that date, and REMANDED to MTRS for further proceedings consistent with this decision.⁴

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

⁴ The most recent submission appearing in the case file is a cryptic email inquiry from Mr. Capeless. It is possible to interpret that email as implying a concession that Mr. Capeless taught one out-of-state student for a period of four months. MTRS may inquire into this point on remand and may reduce Mr. Capeless's purchasable period by up to four months to the extent that he taught a student whose tuition was not financed by the Commonwealth before April 8, 2020.