

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Michael Carey,**  
Petitioner

v.

Docket No. CR-22-0570

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Michael Carey, *pro se*

**Appearance for Respondent:**

Brendan McGough, Esq.  
State Board of Retirement  
One Winter Street, 8<sup>th</sup> Floor  
Boston MA 02108

**Administrative Magistrate:**

Timothy M. Pomarole, Esq.

**SUMMARY OF DECISION**

The petitioner appeals the decision by the State Board of Retirement (“Board”) to deny his application to purchase prior state service on the ground that there was insufficient documentation to substantiate: (1) the eligible service; (2) the amount of credit that could be purchased; and (3) how much that purchase would cost. Records confirming the petitioner’s service and reciting such details as dates of service and rate of pay were destroyed in a fire. Although the petitioner has diligently attempted to reconstruct the relevant details of his service, the Board is vested with discretion to determine the information it needs to authorize a service purchase and to decide whether and how it will make estimates to fill in the gaps. The Board did not abuse its discretion in determining that it did not have the information it needed to grant the purchase request. The decision is affirmed.

**DECISION**

The petitioner, Michael Carey, appeals the decision of the State Board of Retirement (“the Board”) denying his request to purchase prior service with the Commonwealth.

I held a hybrid in-person/WebEx hearing on February 8, 2024. The hearing was recorded. I admitted Petitioner’s Exhibits 1-8 and Respondent’s Exhibits 1-5 into evidence. Mr. Carey testified in person on his own behalf. Margaret Thompson, a former colleague of Mr. Carey’s, testified on his behalf via WebEx. The parties submitted post-hearing memoranda, whereupon the record was closed.

**FINDINGS OF FACT**

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

*Background Information and Mr. Carey’s Service Purchase Request*

1. Mr. Carey became Register of Probate for the Hampshire Probate and Family Court on January 1, 2013. (Respondent’s Exhibit 1).
2. On or about March 22, 2017, Mr. Carey submitted to the Board a buyback request form in which he asked to purchase his prior service as an entry-level social worker with the Massachusetts Department of Public Welfare (now the Department of Transitional Assistance) from February 17, 1975 to April 2, 1976. Mr. Carey stated that this was a full-time position and that, to the best of his recollection, the annual salary for the position was between \$6,500 and \$8,000. (Petitioner’s Exhibit 1).
3. On July 19, 2021, the Board informed Mr. Carey by letter that it required “official documentation” from his former employer summarizing and certifying: (1) “[t]he exact dates of employment and a breakdown of any

breaks in employment and information of whether the position was full time, part-time, per diem, etc. (FTE %) and the exact hours worked”; and (2) “[i]nformation on the hourly/daily/weekly rates that were used to calculate his paychecks. When the rates changed, we need the effective dates of the changes.” (Respondent’s Exhibit 2).

4. On August 11, 2021, the Board sent a letter to the Department of Transitional Assistance seeking confirmation of Mr. Carey’s dates of service, any periods of leave of absence without pay, and his annual rate of pay. A handwritten notation on the copy of this letter submitted as Respondent’s Exhibit 3 indicates that no documents were available. (Respondent’s Exhibit 3).
5. On October 1, 2021, the Board informed Mr. Carey that he did not submit sufficient information to determine: (1) his eligibility to purchase the requested service; (2) the amount of creditable service for which he might be eligible; or (3) the cost of purchasing the service. The Board informed Mr. Carey that it would take no further action on his request until additional information could be provided. (Respondent’s Exhibit 4).
6. In a letter dated October 7, 2021, Mr. Carey responded to the Board’s October 1, 2021 letter. He noted the difficulty in obtaining records and asked:

Assuming the worst case scenario for me, i.e., that my personal CETA<sup>1</sup> employment records remain unobtainable, would the Board consider, for comparison purposes, making reference to the payroll records of Margaret Thompson, who began her employment in an identical position and grade level within weeks of my hiring and who by her submitted statement confirms identical work and salary schedules to mine.

---

<sup>1</sup> As noted in paragraph 16 below, “CETA” refers to the Comprehensive Employment and Training Act of 1973.

(Petitioner’s Exhibit 3). Although the letter refers to a “submitted statement” by Margaret Thompson, that statement is not part of the record. I infer that this statement, like her testimony at the hearing, was based on her recollections of the details pertaining to her and Mr. Carey’s service at the Department of Public Welfare.

7. The record does not contain any response by the Board to Mr. Carey’s inquiry about whether it would consider utilizing Ms. Thompson’s records to help determine the applicable terms of his prior service.
8. In a letter dated June 13, 2022, the Human Resources Department for the city of Northampton, Massachusetts confirmed that a 1975 W-2 statement was the only employment document that could be recovered for Mr. Carey, noting that the remaining relevant documents were lost in a fire. (Petitioner’s Exhibit 6).
9. On November 9, 2022, the Board approved Mr. Carey’s request to purchase service from May 20, 1975 to December 31, 1975. (Petitioner’s Exhibit 4).

*Proceedings at DALA*

10. On November 20, 2022, Mr. Carey filed a notice of appeal with DALA, evidently construing the Board’s November 9, 2022 letter as a denial of his request to purchase the periods from February 17, 1975 through May 20, 1975 and January 1, 1976 to April 2, 1976.
11. On March 23, 2023, this Division apprised Mr. Carey via e-mail that the November 9, 2022 letter was not an appealable order because it did not reference the buyback requests it was denying and did not contain a notice of appellate rights.
12. In a letter to the Board dated March 25, 2023, Mr. Carey asked the Board to

act on his request.<sup>2</sup>

13. On or about May 8, 2023, Mr. Carey filed a motion and accompanying affidavit with this Division seeking an order compelling the Board to act on his request.
14. In a pre-hearing order dated May 15, 2023, this Division observed that the Board's failure to act on Mr. Carey's request was appealable and construed his motion to compel as a notice of appeal.
15. On May 18, 2023, the Board informed Mr. Carey by mail that it was unable to process his service purchase request because he "was unable to submit verifiable documentation." (Respondent's Exhibit 5).
16. The documentary evidence includes the following documents that were created during or relatively close in time to Mr. Carey's prior service:
  - A letter from Mr. Carey to the Honorable Luke F. Ryan, dated March 7, 1976. In this letter, Mr. Carey expresses his interest in securing a position with the Hampshire County Probation Department. Among other things, he writes: "For the past thirteen months I have been employed by the Massachusetts Department of Public Welfare as a social worker ... This position was made possible by the Community Employment and Training Act and will terminate in spring, 1976." (Petitioner's Exhibit 4).
  - A letter from Judge Ryan to Mr. Carey, dated April 5, 1976, and appointing him a probation officer, effective that day. (Petitioner's Exhibit 5).
  - A "Probation Field Survey" from the Office of the Commissioner of Probation, dated March 22, 1978. This document was filled out by Mr. Carey. In the section titled "Previous Full-time Employment," Mr. Carey writes "Mass. Welfare Dept." (Petitioner's Exhibit 6).
  - A W-2 for the year 1975. This document reflects wages of \$5,862.62. It lists the payer's name as "C.E.T.A. Programs Northampton Subgrantee."

---

<sup>2</sup> There is no copy of this letter in the file. In an affidavit (referenced in the following paragraph) Mr. Carey avers that he sent it. The Board does not dispute that Mr. Carey sent the letter.

(Petitioner's Exhibit 8). The acronym (hereinafter "CETA") stands for the Comprehensive Employment and Training Act of 1973, Pub. L. No. 93-203, 87 Stat. 839. The Comprehensive Employment and Training Act of 1973 was a law enacted by Congress providing for the local expenditure of federal funds for job training and workforce development.

17. Mr. Carey had also provided the Board with a March 17, 2017 affidavit from Jane M. O'Riordan, a former employee of the Hampshire Employment and Training Center (a subsidiary of the Comprehensive Employment and Training Act), who averred that her office processed Mr. Carey's application and that he worked full time with the Department of Public Welfare from February 1975 to April 1976. She stated that Mr. Carey's salary was not more than \$9,000 per year. (Petitioner's Exhibit 2).

18. After the hearing, and upon review of the 1975 W-2 statement Mr. Carey had submitted, the Board agreed that Mr. Carey could purchase his remaining 1975 service (February 17, 1975 through May 19, 1975). (Board Post-Hearing Brief, at 7).

### **CONCLUSION AND ORDER**

Because the Board has now agreed that Mr. Carey may purchase his prior service for 1975, the only remaining time period at issue in this appeal is January 1, 1976 to April 2, 1976.

As the petitioner, Mr. Carey carries the burden of establishing his entitlement to purchase his prior service by a preponderance of the evidence. *Basile v. Mass. Teachers' Retirement Sys.*, CR-07-452 (DALA June 22, 2011).

The purchase of prior service is governed by G.L. c. 32, § 3(5), which provides in pertinent part that the member "shall furnish the Board with such information as it shall require to determine the amount to be paid and the credit allowed under this subdivision."

Another relevant provision, G.L. c. 32, § 20(5)(c)(1), provides that “[w]hensoever such board shall find it impossible or impractical to consult an original record to determine the date of birth, length of service, amount of regular compensation or other pertinent fact with regard to any member, it may, subject to the approval of the actuary, use estimates thereof on any basis which in its judgment is fair and just.”

Collectively, § 3(5) and § 20(5)(c)(1) grant retirement boards the discretion to determine the documentation needed to authorize a service purchase and whether and how to use estimates when that documentation is missing. *Lydon v. Quincy Retirement Bd.*, CR-17-689 & CR-18-275, at \*3-5 (Contributory Retirement Appeal Board (“CRAB”) Jan. 8, 2020). The Contributory Retirement Appeal Board (“CRAB”) has held that these determinations will not be second-guessed absent an abuse of discretion. *Id.* The abuse of discretion standard is exacting – the decision must not only be wrong, but also reflect such a clear error of judgment that it “falls outside the range of reasonable alternatives.” *L.L. v. Com.*, 470 Mass. 169, 185 n.27 (2014).

In this case, Mr. Carey does not appear to dispute that the Board has reasonably required information confirming the dates of service, the rate(s) of regular pay, the funds from which Mr. Carey’s salary was paid, whether there were any periods when Mr. Carey was off payroll, and any periods during which Mr. Carey was working part-time. Instead, this appeal turns on the Board’s determination that Mr. Carey did not furnish adequate documentation to establish his entitlement to purchase the service, the allowable credit for the purchase, and the cost of the purchase for the remaining period still being contested. Accordingly, the central issue is whether the Board abused its discretion in declining to: (1) rely upon the recollections of Mr. Carey, Ms. Thompson, and Ms. O’Riordan about the terms of Mr. Carey’s prior service; (2) rely upon documents

furnished by Mr. Carey; and (3) make estimates to the extent the acceptable documentation fell short of establishing the details of Mr. Carey's prior service.

With respect to the first of these issues, the Board did not abuse its discretion in declining to rely upon Mr. Carey's, Ms. Thompson's, and Ms. O'Riordan's recollections. Although G.L. c. 32, § 20(5)(c)(1), does not necessarily preclude a retirement board from relying upon individuals' recollections, this provision reflects an expectation that "original records" (such as tax and payroll records), rather than individuals' recollections, will be the principal source of information about specific dates and figures relating to a member's service. Against that statutory backdrop, and mindful of the fact that my review of this issue is for abuse of discretion, rather than de novo, I cannot say that the Board abused its discretion in declining to rely upon "[h]alf century old recollections," (Board's Post-Hearing Brief, at 6).

The Board's decision not to rely on the documents provided by Mr. Carey (other than the W-2 for 1975, upon which it did rely) is a closer call. Most of the documentation furnished by Mr. Carey is contemporaneous or almost contemporaneous with his employment with the Department of Public Welfare. The Board's concerns about "[h]alf century old recollections" thus do not apply to these documents.<sup>3</sup> Moreover, given the age of these documents, there can be no colorable concern that they shaded the truth to bolster a service purchase request that would not be made until decades later.<sup>4</sup>

---

<sup>3</sup> The only document that is not contemporaneous is the Probation Field survey, which Mr. Carey filled out two years after he completed his service with the Department of Public Welfare. (Petitioner's Exhibit 6).

<sup>4</sup> As a point of clarification, the Board has registered no concerns about Mr. Carey's, Ms. Thompson's, or Ms. O'Riordan's truthfulness.



That said, to reconstruct Mr. Carey's prior service from these miscellaneous documents would have been like completing a jigsaw puzzle comprising imperfectly fitted pieces. And even pieced together, the Board would still need to fill critical gaps relating to his prior service.<sup>5</sup>

First, although the documents, taken at face value, show that Mr. Carey was employed at the Department of Public Welfare as early as January 1, 1976 and as late as March 3, 1976, and that he started his next position on April 5, 1976,<sup>6</sup> they do not establish that he worked at the Department of Public Welfare between March 4, 1976 and April 4, 1976. This gap is not particularly serious because it could be resolved by excluding the period between March 4, 1976 and April 4, 1976 from Mr. Carey's service purchase.

The next gap, relating to Mr. Carey's rate of pay, is more problematic. The documentary evidence does not recite Mr. Carey's precise rate of pay from January 1,

---

<sup>5</sup> I note that I do not believe there are any reasonable gaps in the documentation concerning the funds through which Mr. Carey was paid. The 1975 W-2 establishes that Mr. Carey's position at the Department of Public Welfare was funded under CETA during 1975. (Petitioner's Exhibit 8). Mr. Carey's March 7, 1976 letter to Judge Ryan states that his position was funded by CETA. (Petitioner's Exhibit 4). CETA-funded positions with governmental units are eligible for retirement credit. *Boyle v. Pittsfield Ret. Bd.*, CR-02-587, 2007 WL 1660992, at \*8 (DALA May 11, 2007).

<sup>6</sup> The 1975 W-2 (Petitioner's Exhibit 8) confirms that Mr. Carey was employed by the Department of Public Welfare in 1975. Mr. Carey's March 7, 1976 letter to Judge Ryan states that he had been employed by the Department of Public Welfare for the last thirteen months. (Petitioner's Exhibit 4). If this statement is accepted at face value (and I can discern no reason why it should not be) it confirms that his employment in 1975 by the Department of Public Welfare continued up to the date of the letter. Judge Ryan's April 5, 1976 letter to Mr. Carey appointing him a probation officer (Petitioner's Exhibit 5) establishes that Mr. Carey was employed by the Department of Public Works no later than April 5, 1976.

1976 to April 5, 1976. Instead, the documentary evidence contains indirect evidence of a probable pay range. First, Mr. Carey’s W-2 for 1975 recites a salary of \$5,862.62 for forty-three weeks of work (Mr. Carey started on February 17, 1975).<sup>7</sup> Second, CETA capped the annual salary for positions it funded at \$10,000. § 208(a)(3), 87 Stat. at 855. Thus, while the Board had evidence concerning a likely salary range, the Board would have to estimate an annual rate of pay for the period. Perhaps, as with the dates of service, the Board could have taken a rather conservative approach – it could have assumed a purchase cost based on a \$10,000 annual salary. But it was not required to do so.

More serious gaps concern whether Mr. Carey was a full-time employee for the entirety of the requested purchase period and whether he spent any time off payroll. In the section of the Probation Field Survey asking respondents to list their prior “full-time” employment, Mr. Carey lists the Department of Public Welfare. But this portion of the survey does not appear to ask respondents to carve out periods of part-time work or time off payroll from jobs that they could reasonably characterize, generally, as full-time. Even assuming (as I do) Mr. Carey’s good faith in completing this survey, it does not establish that there were no dates during which he was part-time or off payroll.

In sum, the documents furnished by Mr. Carey, even when assembled, contain numerous gaps that would need to be filled in. Some of these gaps could be more easily managed than others, but it was within the Board’s discretion to determine that, taken collectively, these gaps left too many unanswered questions.

---

<sup>7</sup> For purposes of this discussion, I rely upon Mr. Carey’s calculation that he worked 43 weeks in 1975. (Mr. Carey’s Post-Hearing Brief, at p. 4).

A few final notes: First, the fact that original documentation is unavailable through no fault of Mr. Carey does not change the analysis. *Rothwell v. Mass. Teachers' Ret. Sys.*, CR-13-532 & CR-13-584, at \*5 (DALA Jan. 26, 2018) (citation omitted).

Second, I acknowledge Mr. Carey's citation to *Petrillo v. Public Employee Retirement Administration* for the proposition that CRAB "has, at times, refused to apply strict statutory construction and had rendered equitable remedies in behalf of applicants who are being shortchanged by the system." CR-92-731, at \*4 (DALA Feb. 15, 1993). When that decision was appealed to CRAB, however, CRAB disagreed that it had the authority to grant equitable remedies inconsistent with statutory requirements. *Petrillo v. Public Employee Retirement Administration*, CR-92-731, at \*1 (CRAB Oct. 22, 1993). As recently as this year, CRAB has confirmed that "DALA and CRAB simply do not have the authority to provide equitable relief where it contravenes the retirement law." *Banks v. State Bd. of Retirement*, CR-24-0068, 2024 WL 3770229, at \*2 (DALA July 3, 2024). Accordingly, although Mr. Carey is not responsible for the absence of original records and has worked diligently to reconstruct the terms of his prior service, I am not authorized to extend an equitable remedy in this case.

For the foregoing reasons, the Board's decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Timothy M. Pomarole*

---

Timothy M. Pomarole, Esq.  
Administrative Magistrate

Dated: November 29, 2024