

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

MICHAEL CENTOLA,

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-19-507

DECISION

The petitioner-appellant Michael Centola appeals from a decision of the Division of Administrative Law Appeals (DALA) affirming the State Board of Retirement (Board)'s denial of his request to purchase credit for a period of service as a member of the optional retirement plan established under G.L. c. 15A, § 40. The appeal was decided upon the written submissions pursuant to 801 CMR 1.01(10)(c), and the magistrate admitted into evidence Exhibits 1 to 9 from the Board's submission. The DALA decision is dated August 19, 2022. Mr. Centola filed a timely appeal to us.

After reviewing the evidence in the record and the arguments presented by both parties, we adopt the Findings of Fact in the August 19, 2022 DALA decision

as our own, with several modifications,¹ and we incorporate the decision by reference. For the reasons below, we affirm the DALA decision but disagree with the weight DALA gave to an exhibit in the record and the resulting evidentiary presumption it employed. *Affirm.*

Background. Mr. Centola began working for the University of Massachusetts (UMass) Medical School in 2009 and became a member of the Massachusetts State Employees' Retirement System (MSERS), the retirement system administered by the Board.² In 2012, Mr. Centola left the MSERS and enrolled in the optional retirement plan (ORP) for higher education employees.³ The ORP was established pursuant to G.L. c. 15A, § 40 and is distinct from the retirement systems established pursuant to G.L. c. 32, including the MSERS.

¹ We make the following amendments to the Findings of Fact:

- For the reasons stated later in this decision, we delete the following sentence from FF#2: "During 2013-2014, DHE mailed four such notices to Mr. Centola, using the same address at which Mr. Centola resides today."
- We amend the first sentence of Finding of Fact #3 to read: "Mr. Centola remained in the ORP until the beginning of 2016, when he left state employment." The original Finding of Fact #3 stated that Mr. Centola left state employment at the end of 2015, but the exhibits in the record indicate that he was a state employee until January 1, 2016. Exs. 5 and 6. We also amend the fourth sentence in Finding of Fact #3 to read: "Mr. Centola also submitted a request to purchase credit for his time as an ORP member." The original Finding of Fact #3 stated that Mr. Centola submitted the request approximately one year after he began working at UMass Lowell in September 2018, but the request in the record (Exhibit 6) is dated September 12, 2018.

² FF#1.

³ FF#1.

In early 2016, Mr. Centola left state employment.⁴ In September 2018, Mr. Centola returned to state employment, taking a job at UMass Lowell, and became an MSERS member again.⁵ Mr. Centola then submitted a request to the Board to purchase creditable service for the time in which he was an ORP member.⁶

By letter dated October 2, 2019, the Board denied Mr. Centola's request, for two reasons. First, the Board stated that there was no provision under G.L. c. 32 that would permit Mr. Centola to purchase his ORP time as creditable service for retirement purposes. Second, the Board considered whether Mr. Centola might be eligible to transfer his ORP service to the MSERS.⁷ The Board first observed that under G.L. c. 15A, § 40(2)(b)(iv), an employee electing to participate in the ORP is ineligible for participation in the MSERS as long as the employee is continuously employed in an eligible position within a public institution of higher learning.⁸ The Board noted, however, that Chapter 176, section 60 of the Acts of 2011 (section 60) provided ORP participants with a one-time opportunity to transfer to the MSERS, which was only available for a fixed period of time and had closed. The Board stated that the DHE "would have sent three notices" concerning Section 60 to Mr. Centola

⁴ FF#3.

⁵ FF#3.

⁶ FF#3.

⁷ The Board appeals to have raised the possibility of the transfer of Mr. Centola's ORP service to the MSERS on its own. Mr. Centola's request to the Board was to purchase service. In its Response to Mr. Centola's Specific Objections to the DALA decision, the Board states that section 60 is not a buyback provision but instead involves a transfer of membership.

⁸ The Board cited G.L. c. 15A, § 40(b)(iv), but it is clear from the text that it meant to cite G.L. c. 15A, § 40(2)(b)(iv).

and that it did not appeal that he had responded to them. The Board then denied Mr. Centola's request to purchase his ORP time as creditable service for retirement purposes under G.L. c. 32.

Mr. Centola timely appealed to DALA, stating in an October 14, 2019 appeal letter that he was "very confident" that he never received the DRE notification letters and that if he had, he "would have responded accordingly."⁹

DALA affirmed the Board's decision on the grounds that no provision in G.L. c. 32 authorizes the purchase of ORP time as creditable service. DALA also concluded that Mr. Centola could not transfer his ORP time to the MSERS pursuant to section 60. Relying on an unsworn letter from DRE in the record, DALA first found that DRE had mailed four notification letters concerning section 60 to Mr. Centola in 2013-2014.¹⁰ Then, stating that there is a presumption under Massachusetts law that a properly posted letter is duly delivered to the addressee, DALA concluded that Mr. Centola had not rebutted the presumption that he received the letters.¹¹ DALA then held that because Mr. Centola did not make a transfer request until several years after he (presumptively) received DRE's eligibility notifications, the transfer opportunity was no longer available to him, as

⁹ Ex. 2

¹⁰ FF#2. The DRE letter said that DHE had sent notifications in November 2013, mid-April 2014, September 2014, and November 2014. Ex. 7. The Board's October 2, 2019 denial letter stated that DHE "would have sent" Mr. Centola three notices, on the following dates: May 2014, September 2014, and November 2014.

¹¹ DALA Decision, p. 2, n. 1.

section 60 only permitted transfers to be made within 180 days of notification by DHE of an employee's eligibility. Mr. Centola timely appealed to us.

Discussion. Mr. Centola does not argue on appeal that any section in G.L. 32 permits him to purchase his ORP time. Instead, his primary argument is that DALA erred in concluding that he received the DHE notices. In addition, Mr. Centola argues that G.L. c. 15A, § 40(2)(b)(iv) does not bar him from buying back his ORP time and that failing to allow him to repurchase this time would cause grave harm. We address each of these arguments, none of which we find availing, below.

(I) Argument Regarding Receipt of DHE Notices

We first address the standard of review. In reviewing a DALA decision, we give deference to its subsidiary findings. *Vinal v. Contributory Retirement Appeal Board*, 13 Mass. App. Ct. 85, 102 (1982).¹² Where, as here, a case is submitted upon the papers, the parties still must prove the facts supporting their allegations or defenses on which they have the burden of proof. 801 CMR 1.01(10)(c).

Mr. Centola argues that for several reasons, DALA erred in concluding that he received the DHE notifications in 2013-2014. First, Mr. Centola objects to DALA's reliance on the letter from a DHE official to employ the presumption that Mr. Centola received the notifications because the letter was not sworn to under the pains and penalties of perjury or subject to any direct or cross-examination. Second,

¹² We give substantial deference to those findings that rest on a hearing officer's resolution of credibility questions. *Vinal*, 13 Mass. App. Ct. at 102.

Mr. Centola appears to argue that he rebutted the presumption, pointing to the statement in his appeal letter to DALA that he never received the DHE notifications. Finally, Mr. Centola casts doubt on the cases cited by DALA for the proposition that under Massachusetts law, a duly posted letter is presumed received by the addressee.¹³

We agree with Mr. Centola that DALA should not have relied on the letter from DHE to conclude that he received the notifications. Although the rules of evidence observed by the courts do not apply in DALA proceedings, DALA may admit evidence and give it probative effect only if it is "the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." G.L. c. 30A, § 11(2). We conclude, mindful of the deference that we must give DALA subsidiary findings, that the DHE letter does not meet this standard of reliability and should have been given no weight.¹⁴ First, the letter was not signed under oath or under the pains and penalties of perjury. Second, the letter states that it enclosed the notices that Mr. Centola received, but those notices were not included in the record, so there is no way to independently analyze what Mr. Centola would have understood from them, assuming he received them. DALA did not explain why it found the DHE letter to be reliable, so we cannot evaluate its rationale for relying

¹³ We agree with DALA that under Massachusetts law, the proper mailing of a letter is prima facie evidence in civil cases of its receipt by the addressee. E.g., *Com.*

v. Crossup, 369 Mass. 228, 239-40 (1975)(citing cases).

¹⁴ Our conclusion that DALA should not have given weight to the DHE letter should not be interpreted as establishing a bright line rule as to what sort of evidence may

establish that official communications were mailed. Rather, our conclusion is limited to the facts of this case.

on it. Because we conclude that the DHE letter should have been given no weight, we also conclude that DALA should not have found that DRE notices were in fact mailed to Mr. Centola or employed the resulting presumption that he received them.

Our rejection of DALA's reliance on the DRE letter does not resolve Mr. Centola's appeal, however. The next question is whether, discounting the DRE letter and considering the rest of the evidence in the record, DALA's decision should be reversed or remanded. We conclude that it should not be. Mr. Centola had the burden of proving at DALA that he was eligible to transfer his ORP time to the MSERS under section 60, and we conclude that the record does not contain any evidence from which a reasonable factfinder could find that he met it. E.g., *Stafford v. Massachusetts Teachers' Retirement System*, CR-12-34.4 and CR-17-233 (CRAB March 22, 2021)(petitioner has burden of proof on each element necessary to establish entitlement to a benefit under Chapter 32). Because section 60 required that an employee apply for transfer within 180 days of notification of the transfer opportunity by DHE, Mr. Centola needed to prove at DALA that he either applied for the transfer within 180 days of such notification or that he never received such notification. The only document in the record on the matter is Mr. Centola's appeal letter, dated October 14, 2019, in which he stated that he was "very confident" that he never received the DRE notifications. The DALA magistrate referred to this letter in the context of discussing the presumption and concluded, in a footnote, that

Mr. Centola had identified no facts or evidence that might rebut the presumption.¹⁶ We conclude that the letter is also insufficient for meeting Mr. Centola's burden of proof.¹⁶ We would give the letter no weight because it is self-serving and was not signed under oath or under the pains and penalties of perjury.¹⁷ We therefore conclude that DALA's reliance on the DHE letter, with which we disagree, does not warrant reversal of its ultimate decision or remand for further fact-finding.

(2) Argument Regarding G.L. c. 15A, § 40(2)(b)(iv)

Mr. Centola also argues that G.L. c. 15A, § 40(2)(b)(iv) does not bar him from purchasing credit for his time as an ORP member. Mr. Centola states that without a showing that he was "continuously employed" ... [he] should not have been denied the opportunity to repurchase his time due to [G.L. c. 15A, § 40(2)(b)(iv)]." Mr. Centola's argument is short, and its precise contours are unclear, but he

¹⁵ DALA Decision, p. 2, n. 1.

¹⁶ We agree with DALA that Mr. Centola's letter would be insufficient to rebut any presumption that he received the letters.

¹⁷ Mr. Centola, through counsel, included with his appeal a motion to enlarge the record to include an affidavit by him. Mr. Centola's counsel argued in its appeal letter that CRAB should consider the affidavit because Mr. Centola was unrepresented at DALA and "not allowed to challenge any evidence before the Administrative Magistrate." We deny Mr. Centola's motion and do not consider the affidavit in evaluating Mr. Centola's appeal because it was not submitted to DALA. Although we recognize the challenges of self-representation, a party may not expand the record on appeal on the basis that they were a *pro se* litigant in the prior proceeding. In addition, there is no argument or evidence that Mr. Centola did not knowingly submit his appeal on written submissions pursuant to 801 CMR 1.01(10)(c), thereby eliminating the possibility of live witnesses and cross-examination, or that the magistrate refused any request by him to challenge the documentary evidence submitted by the Board prior to the final decision being rendered. Finally, we need not, and do not, take a position here about whether, had Mr. Centola submitted the affidavit to DALA, DALA should have given it any weight.

appears to be basing it on the clause in G.L. c. 15A, § 40(2)(b)(iv) that states: "Any eligible employee electing to participate in the optional retirement program shall be ineligible for membership in the state employees' retirement system as long as he remains continuously employed in any eligible position within a public institution of higher education, as defined in section five ..."¹⁸

While Mr. Centola is correct that this clause does not bar him from purchasing ORP time for the purpose of creditable service in the MSERS, it also does not authorize him (or anyone else) to do so. The purpose of the clause is to convey that an ORP participant who is continuously employed in an eligible position at a public higher education institution in Massachusetts is barred from membership in the MSERS during the time of that continuous employment. The clause does not give an ORP participant a right to purchase ORP time for purposes of the MSERS once that participant has terminated that continuous employment and later joined (or re-joined) the MSERS.

DALA correctly concluded that Mr. Centola did not identify any provision under G.L. 32 - the statute that establishes and governs the MSERS - that would allow him to purchase his ORP time for purposes of creditable service in the MSERS. To the extent that Mr. Centola objected to the DALA decision on the grounds that G.L. c. 15A, § 40(2)(b)(iv) permits him to purchase his ORP service for creditable service in the MSERS, we reject that argument.

¹⁸ The Board cited this clause in its October 2, 2019 denial letter to Mr. Centola. Ex. 2.

(3) Argument Regarding Grave Harm

Mr. Centola's final argument is that he would suffer grave harm if he were not allowed to purchase his ORP time. Mr. Centola states, through counsel, that he enrolled in the MSERS when he returned to state employment with the belief that he would be able to purchase his ORP time. Mr. Centola also alleges that there was a delay in responding to his request to purchase his ORP time and that if a response had been timely, he could have returned to the ORP.

While we are sympathetic to the effects of our decision on Mr. Centola's finances and retirement planning, we are unfortunately unable to grant him the relief he requests. The benefits to which members of retirement systems are entitled are defined and limited by G.L. c. 32, and DALA and CRAB are unable to grant benefits beyond what the retirement law provides. *Clothier v. Teachers' Retirement Syst.*, 78 Mass. App. Ct. 143, 146 (2010). See also *Petrillo v. Public Employee Retirement Administration*, CR-92-731 (CRAB Oct. 22, 1993)(CRAB cannot provide equitable remedy in contravention of the statute).

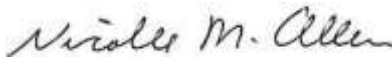
Conclusion. We affirm the August 19, 2022 DALA decision affirming the Board's denial of Mr. Centola's request to purchase his ORP time for purposes of creditable service under G.L. c. 32. ***Affirm.***

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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