

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law
Appeals**

Kevin Clifford,
Petitioner

Docket No. CR-24-0013

January 31, 2025

v.

**Massachusetts Teachers' Retirement
System,**
Respondent

Appearance for Petitioner:

Jesse R. Gibbings, Esq.

Appearance for Respondent:

Lori Curtis Krusell, Esq.

Administrative Magistrate:

Bonney Cashin

Summary of Decision

The petitioner failed to request that the board act on his third application under G. L. c. 32, § 4(1)(h1/2), to purchase creditable service for his prior work experience. Such a request is a prerequisite to initiating the “failure to act” appeal deadline. The petitioner earlier failed to appeal the board’s decision of March 2023. That decision is final.

DECISION

Introduction

The petitioner, Kevin Clifford, challenges the decision of the Massachusetts Teachers’ Retirement System (“MTRS”) concerning his attempt to purchase creditable service for his prior work experience as a carpenter before he became a vocational

education teacher. Mr. Clifford's challenge fails on jurisdictional grounds. Accordingly, I do not reach the merits of his claim.

The Division of Administrative Law Appeals ("DALA") allowed Mr. Clifford's request to have the matter decided without a hearing under 801 CMR 1.01(10)(c). The MTRS did not object. The parties filed proposed exhibits.¹ I admit the following documents in evidence.

1. Clifford Service Purchase Application dated November 27, 2012.
2. MTRS Invoice dated February 12, 2016.
3. Clifford Department of Education Vocational Technical Approval dated June 3, 2000.
4. Email from MTRS to Clifford dated February 12, 2016.
5. Clifford Service Purchase Application dated February 3, 2023.
6. MTRS denial letter dated March 21, 2023.
7. Clifford Service Purchase Application dated October 15, 2023.
8. Appeal (of October 15, 2023 Application) dated January 4, 2024.

FINDINGS OF FACT

Based upon the evidence in the record and the reasonable inferences drawn from it, I find the following facts:

¹ The Petitioner failed to comply with the Scheduling Order issued February 16, 2024. His document numbering began again with No. 1 and most documents were duplicates of those already filed by the Respondent. Orders directing parties how to file proposed exhibits are routine in retirement appeals. They assist magistrates in their case preparation and management. DALA expects the parties to read and follow all orders.

I did not admit documents that DALA issued in this matter, because they already are part of the administrative record.

1. Kevin Clifford teaches carpentry at Bristol-Plymouth Regional Vocational High School. (Exhibit 1.) He received his vocational technical approval in 2000. (Exhibit 3.)

2. On November 27, 2012, Mr. Clifford applied to the MTRS to purchase his trade service from “08/1997” to “08/1999.” (Exhibit 1.)

3. The MTRS responded by sending Mr. Clifford an invoice and a confirming email to purchase his service, both dated February 12, 2016. The invoice was for his work experience from September 25, 1996 to September 26, 1999, a longer time period than he had requested in 2012. (Exhibits 2, 4.)

4. The invoice explained that, if he chose to purchase the service, Mr. Clifford must either pay in full or enter into an installment plan no later than 180 days from the mailing date of the invoice or by his retirement date, whichever came first. The invoice stated that if he did not act within the 180 days, he would not be able to purchase the service later. (Exhibit 2.)

5. Mr. Clifford did not respond to the invoice.

6. On February 3, 2023, Mr. Clifford applied to the MTRS to purchase his trade service from “June 1980” to “December 1986.” (Exhibit 5.)

7. On March 21, 2023, the MTRS denied Mr. Clifford’s February request to purchase creditable service for his vocational work experience because he failed to purchase the service in accordance with the terms of the invoice he received in 2016. (Exhibit 6.)

8. Mr. Clifford filed another application dated October 15, 2023, to purchase his trade service from “01/1993” to “12/1996.” (Exhibit 7.)

9. On January 4, 2024, Mr. Clifford filed an appeal of the MTRS’s “failure to act” on his October 15, 2023 application. (Exhibit 8.)

DISCUSSION

DALA lacks jurisdiction to decide this appeal. An analysis under two lines of decisions leads to the same result.

The provision that Mr. Clifford appealed under on January 4, 2024, states in part that “if no time for action thereon is specified,” an aggrieved party must file an appeal “within fifteen days after the expiration of one month following the date of filing a written request with the board[.]” G.L. c. 32, § 16(4). Mr. Clifford did not follow his October application with a written request asking the MTRS to act on it. Such a request is a prerequisite to initiating the “failure to act” appeal deadline. *Lutes v. Clinton Retirement Bd.*, CR-07-1100 (Contributory Retirement Appeal Bd. Nov. 16, 2012). *See also Mackin v. Massachusetts Teachers’ Retirement System*, CR-21-0265 (Division of Admin. Law Appeals Oct. 7, 2022). The failure to make a written request to the MTRS is fatal to Mr. Clifford’s attempt to appeal. *Id.*

Mr. Clifford’s failure above is compounded by his failure to appeal the MTRS decision in March 2023 denying his February 2023 application. A second line of decisions addresses how DALA and the Contributory Retirement Appeal Board (“CRAB”) treat repeated appeals of the same issue.

The MTRS March decision was an “appealable decision.” *Barnstable County Retirement Bd. v. Public Employee Retirement Admin. Comm’n*, CR-07-163 (Contributory Retirement Appeal Bd. Feb. 17, 2012). Had he timely appealed the MTRS decision, Mr. Clifford would have been able to raise all the issues he is trying to raise

here. While Mr. Clifford makes much of the different service time periods to be purchased in each of his applications, all his appeals are based on the same set of facts and seek the same relief—the purchase of creditable service for his vocational technical work.

In *Lospennato v. State Bd. of Retirement*, CR-08-614 (Division of Admin. Law Appeals Jun. 15, 2012), DALA determined that a fifteen-day appeal period ran from the date the retirement board first denied an application for disability retirement benefits, not from the date five years later when the board denied a subsequent request based on the same facts. CRAB has subsequently made clear that *Lospennato* was correctly decided. *Fernandez v. State Bd. of Retirement*, CR-15-124 (Contributory Retirement Appeal Bd. Dec. 21, 2016); *Sanphy v. Massachusetts Teachers' Retirement System*, CR-11-0510 (Contributory Retirement Appeal Bd. Mar. 29, 2013.)

As the Massachusetts Appeals Court has instructed, “[it] is our duty to note and decide a jurisdictional question, regardless of the point at which it was first raised, and whether any party has raised it.” *Flynn v. Contributory Retirement Appeal Bd.*, 17 Mass App. Ct. 668, 670 (1984) (citations omitted.)

Given my conclusions that the appeal fails to meet a statutory prerequisite and is untimely, no decision is possible on the merits of Mr. Clifford’s appeal. *Smith Joe v. Essex Retirement Bd.*, CR-19-0444 (Division of Admin. Law Appeals Nov. 1, 2019). See *Karowski v. Bradgate Assoc., Inc.*, 25 Mass. App. Ct. 526, 528 (1987) (finding District Court had no jurisdiction to vacate an arbitrator’s award and annulling the Court’s ruling); see also *Bailey v. Contributory Retirement Appeal Bd.*, BR CV 2012-1405 (Sup.

Ct. Sept. 30, 2013) (where appeal not filed timely, finding on the merits of the appeal is a nullity.)

CONCLUSION

Mr. Clifford's attempted appeal is dismissed. The unappealed March 2023 decision of the Board is final.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin

Bonney Cashin
Administrative Magistrate

DATED: January 31, 2025