

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

**William McCarthy, as Personal Representative of
the Estate of Jeanette Coolidge,**
Petitioner

v.

Docket No. CR-15-55

State Board of Retirement,
Respondent

ORDER OF DISMISSAL

The Petitioner, William McCarthy, personal representative of the Estate of Jeanette Coolidge, appeals the decision of the State Board of Retirement (“Board”) denying Ms. Coolidge’s request to become a member of the Massachusetts State Employees’ Retirement System (“MSERS”). The Board has filed a motion to dismiss under 807 CMR 1.01(7)(g)(3) for “failure to state a claim upon which relief can be granted.” For the reasons stated below, the motion is meritorious.

Background

On February 17, 2015, Ms. Coolidge initiated this appeal, contesting the Board’s determination that Ms. Coolidge was not entitled to be enrolled in MSERS for her work at Tewksbury State Hospital (TSH). Around that time, Ms. Coolidge also filed a civil wage action against TSH and the Commonwealth in Suffolk Superior Court. (*Coolidge v. Tewksbury State Hospital, et. al.*, Suffolk Superior Court, 1584-CV-02395.) This appeal was stayed during the pendency of the Superior Court litigation.

Ms. Coolidge died in 2016, and Mr. McCarthy was appointed personal representative of her estate. (Letters of Authority for Personal Representative dated August 16, 2016, *Estate of Coolidge*, Middlesex Family & Probate Court, MI16P3015EA.)

In 2023, the Estate reported that it had settled with the Commonwealth. The stay in this action was lifted, and the Board filed this motion to dismiss.

For purposes of this motion, the parties do not dispute that neither Ms. Coolidge, nor her attorney, ever received any forms from the Board, including a form for selecting her retirement options or for designating a beneficiary.

Discussion

To survive a motion to dismiss under 807 CMR 1.01(7)(g)(3) for failure to state a claim, the petitioner is required “only to make factual allegations that plausibly suggest[] an entitlement to relief.” *Blatt v. State Bd. of Ret.*, CR-20-199, 2026 WL 714126, at *4 n.6 (Contrib. Ret. App. Bd. Feb. 19, 2026) (citing *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 676 (2011)). This does not require the petitioner to present admissible or competent evidence, only non-conclusory factual allegations – whether made in the petitioner’s notice of appeal or in other written submissions. *Id.*; *Mattei v. State Bd. of Ret.*, CR-23-0428, 2024 WL 4345194, at *1 (Div. Admin. Law App. Sept. 13, 2024) (citations omitted) (referencing petitioner’s briefing in determining whether she stated a claim upon which relief may be granted).

Turning to the substance of the Board’s motion, as a threshold matter, the Board acknowledges that the issue of whether Ms. Coolidge was entitled to enroll in MSERS turns on factual questions that are not amenable to a pre-hearing disposition.

Accordingly, I assume, for purposes of this appeal only, that Ms. Coolidge should have been allowed to enroll in MSERS.

The Board argues instead that even if Ms. Coolidge had been erroneously excluded from membership, because she did not elect a retirement option the default option would be option (b), which would not – in this case – result in any net disbursement. Because there can be no net recovery, the Board argues, Mr. McCarthy has failed to state a claim upon which relief may be granted. For his part, Mr. McCarthy disputes the contention that the Estate is limited to option (b), but he does not appear to dispute that option (b) would not result in a net recovery. Nor does he dispute the Board's underlying premise that if no monetary recovery is available, this appeal is subject to dismissal. For the reasons set forth below, I agree with the Board's position.

The member of a retirement system may choose among three different means of structuring their retirement benefits: options (a), (b), and (c). The options may be summarized as follows:

Option (a) grants the member the highest possible monthly allowance, with a downside: if the member passes away without collecting the equivalent of his or her careerlong contributions, the balance remains with the retirement system. Option (b) offers a lower monthly allowance but enables the member to appoint a recipient for a lump-sum refund of any undisbursed contributions. Option (c) involves a lower-still allowance to the member but also provides a monthly survivor's allowance to a named beneficiary upon the member's death.

DiBella v. Quincy Ret. Bd., CR-25-0202, 2025 WL 3786572, at *3 (Div. Admin. Law App. Dec. 26, 2025).

Section 12(1) of Chapter 32 provides in pertinent part:

If no election of an option is made or if none is in effect, as provided for in this section, the retirement allowance of such member shall be paid in accordance with the terms of option (b) of this subsection.

G.L. c. 32, § 12(1).

Consistent with this provision, numerous decisions have held that if no valid option is in effect – as a result of the member’s medical incompetence to make the selection, fraudulent inducement, or the failure to meet statutory prerequisites to option selection – the consequence is that the retirement allowance is to be paid in accordance with option (b). *Morales v. State Bd. of Ret.*, CR-04-0529, 2008 WL 7540637, at *3 (Contrib. Ret. App. Bd. Dec. 23, 2008); *McGeary v. Webster Ret. Bd.*, CR-20-0261, 2022 WL 1692143, at *3-4 (Div. Admin. Law. App. Sept. 9, 2022) (citations omitted); *Millar v. State Bd. of Ret.*, CR-12-634, at *6 (Div. Admin. Law App. June 29, 2018) (citations omitted).

The decisional law is not univocal on this issue, however. In at least two decisions, *Nosek v. State Board of Retirement* and *Rice v. State Board of Retirement*, this Division granted requests to change a deceased member’s option selection from option (b) to option (c) on the ground that the member had been incompetent when he made the election. CR-93-602 (Div. Admin. Law App. Jan. 17, 1994); CR-95-036 (Div. Admin. Law App. Nov. 30, 1995). *Nosek* and *Rice* are of less recent vintage than the decisions cited above, however, and, more importantly, *Nosek* and *Rice* do not discuss the statutory requirement that, in the absence of a valid option selection, the default option is option (b). On balance, decisions such as *Morales*, *McGeary*, and *Millar* are more persuasive as they follow the statutory provision squarely on point.

I acknowledge Mr. McCarthy's citation to *Bianchi Retirement Board v. Somerville*. In that case, the Supreme Judicial Court concluded that a deceased public employee had been entitled to retire as a veteran under G.L. c. 32, § 58 and that his widow was entitled to benefits under G.L. c. 32, § 58B. 359 Mass. 642 (1971). Although the decedent had apparently not had an opportunity to select an option under § 58B, the Court held that the evidence permitted a finding that, had the decedent made a selection, he would have selected an option that reduced his monthly retirement allowance but provided survivor benefits to his widow, and thus ordered a calculation of benefits under that option. *Id.* at 651.

I am not persuaded that *Bianchi* should drive the outcome here. As the courts have pointed out from time to time, "retirement law is notoriously complex." *See, e.g., Namay v. Contributory Ret. Appeal Bd.*, 19 Mass. App. Ct. 456, 463 (1985). One cannot simply airdrop a half century's old handling of a different statutory provision (§ 58B) into a present-day § 12 dispute. Section 58B provides that if:

a veteran entitled to be retired under the provisions of section fifty-eight dies before making written application for such retirement, or, having exercised the option provided by this section, dies before the effective date of his retirement, his widow shall receive an allowance consisting of two thirds of the actuarial equivalent to which said veteran would have been entitled had his retirement allowance been computed under [§ 58B].

Bianchi does not quote or discuss this language, and there is no indication that the parties argued it. The omission is noteworthy because the language provides by default the same remedy the Court appears to have provided by means of an evidentiary inference. The fact that the Court did not discuss § 58B's benefit default provision makes it difficult to understand how the Court's resolution of the benefits

question should inform a correct interpretation of that provision, let alone whether or how its reasoning can be transposed to a default provision in a different and more complex facet of the public retirement law.

It is true that in various Chapter 32 contexts courts have remarked that they “see nothing in the statute which prevents a member from receiving [] benefits because of an honest error which can be readily and fairly be corrected.” *Boston Ret. Bd. v. McCormick*, 345 Mass. 692, at 698 (1963). But in this particular context, there *is* something in the statute that would prevent Mr. McCarthy from electing an option other than (b): a specific statutory directive concerning how the absence of an option selection should be handled.

In view of the foregoing, I agree with the Board that, even if Ms. Coolidge was entitled to enroll in MSERS and could be enrolled posthumously (and retired posthumously), because she was not able to select an option, the only available option would be option (b).

I also agree with the Board that option (b) would not result in a net recovery of retirement benefits. Because Ms. Coolidge did not make any retirement contributions, her Estate would have to purchase her prior service. *Cf. Wright, et. al. v. State Bd. of Ret.*, CR-16-68, 2022 WL 22989077, at *3-4 (Contrib. Ret. App. Bd. Oct. 18, 2022) (discussing interest rate applicable to purchase of prior service where individual had been erroneously excluded from membership). The Board argues, and Mr. McCarthy does not dispute, that under option (b) the Estate would recover no more than the amount it had paid to purchase the service in the first place. As the Board puts it:

Option (b) consists of a cash refund and annuity. Under that option, the member . . . receives a lower annual retirement allowance in exchange for the unused balance of the member's contributions to the MSERS being refunded to the member's designated beneficiary.

Obviously, Ms. Coolidge never collected nor can ever collect any retirement allowance pursuant to Option (b). As a result there would be no offset from the contributions Ms. Coolidge would have made had she been classified as a TSH employee – or the amount the estate would pay to buyback her service. Under Option (b), this full amount would be immediately returned to the Petitioner, rendering him, essentially, nothing.

(Board Brief, at pp. 4-5).

The remaining question is whether the unavailability of pecuniary recovery warrants dismissal. Mr. McCarthy does not dispute the Board's implicit position that it does. In any case, I conclude that this appeal is subject to dismissal because, without the prospect of a pecuniary recovery, the Estate is no longer "aggrieved" by any failure on the part of the Board to enroll Ms. Coolidge as a member of MSERS. *See Gloucester Ret. Bd. v. Public Employee Ret. Admin. Commission*, CR-21-217, 2025 WL 2322619, at *1 (Contrib. Ret. App. Bd. May 28, 2025) (affirming magistrate's conclusion that petitioning retirement board was not aggrieved because there was no "specific amount of money" it owed as a result of Public Employee Retirement Administration Commission's advisory opinion);¹ *Worcester Reg'l Ret. Sys. v. Middlesex County Ret. Sys., et. al.*, CR-23-0006, 2024 WL 4491676, at *1 (Div. Admin. Law App. Aug. 16, 2024) (observing that

¹ The Contributory Retirement Appeal Board subsequently granted a motion for reconsideration – not because it reconsidered its reasoning, but because the petitioning retirement board demonstrated changed circumstances. Order on Motion for Reconsideration, *Gloucester Ret. App. Bd. v. Public Employee Ret. Admin. Commission*, CR-21-217, 2025 WL 2322618, at *1 (Contrib. Ret. App. Bd. June 23, 2025).

administrative appeals are authorized only by “aggrieved” parties, and aggrievement generally requires some adverse pecuniary consequence) (citations omitted).

For the foregoing reasons, the Board’s motion to dismiss is allowed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: August 14, 2026