

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Eric Dillman,
Petitioner,

Docket No.: CR-26-0057

Dated: September 4, 2026

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Eric Dillman (pro se)

For Respondent: Marko Samardzic, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner took a leave of absence from his job with the Commonwealth in order to serve in the military. The Commonwealth has not since reinstated the petitioner to an identical or similar position. As long as *Moschos v. Worcester Retirement Board*, No. CR-00-102 (Contributory Ret. App. Bd. Jan. 14, 2002), remains good law, the petitioner's military service does not entitle him to creditable service for retirement purposes.

DECISION

Petitioner Eric Dillman appeals from a decision of the State Board of Retirement determining that he is not entitled to retire with a retirement allowance. The appeal was submitted on the papers. I admit into evidence exhibits marked 1-25.

Findings of Fact

The following facts are not in dispute.

1. Dillman became a state employee in 2000. He was a member of the United States Army Reserve. Over the years, Dillman took several leaves of absence from his job to

serve in active-duty training. He received release forms from the Army after each stint and returned to work. (Exhibits 15, 19-22.)

2. In 2014, Dillman received orders to serve a longer term on “active duty” status. He took another leave of absence. Seven years later, in April 2021, a representative of the Commonwealth wrote to Dillman:

[Y]our re-employment rights under [the federal Uniformed Services Employment and Reemployment Rights Act] have been exhausted. . . . [The Commonwealth] has continued to reserve your position for your anticipated return. . . . [Y]ou indicated that your orders are indefinite meaning that . . . you may choose to separate at any time. Accordingly, [the Commonwealth] wants to provide you with an opportunity to return to work . . . no later than July 2021.

Dillman responded that he would “not be able to re-seek full-time employment” on the Commonwealth’s proposed schedule, adding: “my intent is still . . . to return.” The Commonwealth then formally terminated Dillman’s employment. (Exhibits 1, 23-25.)

3. In late 2025, Dillman filed a retirement application. He was approximately fifty years old. In February 2026, the board denied the application, reasoning that Dillman’s combined age and creditable service did not entitle him to retire. Dillman timely appealed. (Exhibits 15, 18.)

Analysis

Massachusetts public employees make retirement contributions throughout their careers and eventually may become entitled to retirement allowances. The conditions on which an allowance is payable are prescribed by several overlapping provisions of the retirement law, G.L. c. 32. Under section 5(1)(a), as well as the second clause of section 10(1), plus the three pertinent paragraphs of section 10(2) (namely paragraphs (a), (b), and (b½)),

allowances are payable only to members who have reached age fifty-five. But the *first* clause of section 10(1) imposes no minimum age. The question presented is whether Dillman is entitled to an allowance under that provision.

Section 10(1) applies both to members who have resigned and to those who have been “removed or discharged” from their positions. There is no dispute that Dillman belongs in at least one of these categories. The debate centers on the section’s other requirement, namely that the member needs to have completed “twenty or more years of creditable service.”

As a general rule, service is creditable for retirement purposes only if the member performed it as an employee of a Massachusetts governmental unit. G.L. c. 32, § 4(1)(a). But military service is governed by special rules. *Id.* § 4(1)(h). The precise computation of Dillman’s creditable service is not crucial for present purposes. The pivotal point is that, in order to meet the twenty-year mark, Dillman would need to receive credit for the long-term stint of active duty that he began in 2014.

The pertinent portion of § 4(1)(h) reads as follows:

The . . . periods during which any member who is a veteran as defined in section one¹ was on leave of absence from the governmental unit . . . for the purpose of serving in such campaign and until he was discharged or released from such service in the armed forces, shall be allowed as creditable service.

Setting aside the undefined term “campaign,” the language of the statute standing alone would seem to entitle Dillman to credit for the years 2014-2021, during which he was “on leave of absence” for the purpose of “service in the armed forces.” The board argues in part that it “has

¹ The board does not dispute Dillman’s status as a “veteran” under G.L. 32, § 1 (incorporating G.L. c. 4, § 7, by reference).

not yet received a service purchase application” from Dillman; but § 4(1)(h) calls for payment and a corresponding purchase application specifically with respect to military service predating an employee’s “entry into [state] service.” The section does not pose these requirements in connection with leaves of absence taken by already-established members.

Alternatively, the board rests its position on the decision of the Contributory Retirement Appeal Board in *Moschos v. Worcester Retirement Board*, No. CR-00-102 (Contributory Ret. App. Bd. Jan. 14, 2002). The member in *Moschos* worked for a municipality, then resigned to serve in the Army, and then returned to work for the municipality again. Determining that he was not entitled to credit for his Army service, CRAB wrote in part:

§ 4(1)(h) provides that any member of a retirement system who is a veteran and who was on a leave of absence . . . for the purpose of serving in the armed forces, *and who is reinstated or reemployed in the same position or a position similar to the one he left for the purpose of serving in the military*, shall be allowed creditable service for the period of his military service. Appellant . . . was not on a leave of absence, and was not reinstated to the same position or a position similar to the position that he left.

Id. (emphasis added). Since his leave of absence, Dillman has not been “reinstated or reemployed” by the Commonwealth in any position, whether similar or dissimilar to his pre-leave position. *Moschos* therefore does not allow Dillman to receive credit for his leave of absence. It makes no difference under that opinion’s analysis whether, as of 2021, Dillman remained interested in returning to work for the Commonwealth someday. Nor does it matter whether employees of the Commonwealth did or did not educate Dillman in 2021 about the potential retirement-law consequences of his decision to remain in the Army at the expense of his state-service job. See *Clothier v. Teachers’ Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010); *Moynihan v. Contributory Ret. Appeal Bd.*, 104 Mass. App. Ct. 1108, 2024 WL 2862240, at *3

(2024) (unpublished memorandum opinion); *Awad v. Hampshire Cty. Ret. Bd.*, No. CR-08-621, 2014 WL 13121791, at *3 (Contributory Ret. App. Bd. Dec. 19, 2014).

It may be fair to describe *Moschos*'s holding as enigmatic. The version of § 4(1)(h) applied there does not appear to have differed materially from the provision in effect today. CRAB did not pinpoint the statutory phrasing or interpretive analysis that call for the credit-seeking employee to be "reinstated or reemployed in the same position or a position similar to the one he left." Nor did the similarly reasoned underlying DALA decision. No other precedents appear to have addressed the point. Nevertheless, an opinion of an appellate tribunal "represents precedent," *Commonwealth v. Hernandez*, 481 Mass. 582, 592 (2019), even when it is "notable for brevity," *id.* at 585, and even if the tribunal cited multiple, alternative lines of reasoning for its conclusion, *Commonwealth v. Lewis*, 497 Mass. 90, 97 (2026). It will be up to CRAB to either overrule or reaffirm *Moschos*, whether on an appeal from the current decision (if Dillman should take one) or on another occasion. *See generally 1A Auto, Inc. v. Director of Off. of Campaign & Pol. Fin.*, 480 Mass. 423, 431 (2018).

Conclusion and Order

For the foregoing reasons, the board's decision is AFFIRMED.

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Division of Administrative Law Appeals