

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Heather Dubois,
Petitioner

v.

Docket No. CR-24-0033

Massachusetts Teachers' Retirement System,
Respondent

Appearance for Petitioner:

Heather Dubois
43 Maine Avenue
P.O. Box 7492
Ocean Park, ME 04063

Appearance for Respondent:

Ashley Freeman, Esq.
Massachusetts Teachers' Retirement System
500 Rutherford Avenue, Suite 201
Charlestown, MA 02129

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Petitioner became a member of the Massachusetts Teachers' Retirement System (MTRS) in August 2012, meaning that she could not retire before age 60. Her purchase of creditable service from before August 2012 did not make her a retroactive member of MTRS and did not make her eligible to retire at age 55. Nor did her volunteering and substitute teaching before August 2012 make her a retroactive member of MTRS who was eligible to retire at age 55.

DECISION

The petitioner, Heather Dubois, appeals the denial by the Massachusetts Teachers' Retirement System of her application for superannuation retirement benefits before she reached age 60. Mrs. Dubois represented herself.

The appeal was submitted upon written submissions. I admitted 22 exhibits, which are marked in the file.

Findings of Fact

1. From May 1, 2007 to January 1, 2008, Mrs. Dubois was a substitute teacher in the Shrewsbury Public Schools. (Ex. 13)

2. From 2008 to 2010, Mrs. Dubois was a substitute in the Westborough Public Schools. She worked a total of four days. (Ex. 13)

3. From September 1, 2010 to June 30, 2012, she was a substitute in the Northborough-Southborough Public Schools. In May and June, 2012, she worked a total of 11 days. (Ex. 13)

4. From August 30, 2010 to June 30 or August 29, 2012, Mrs. Dubois was a part-time art teacher in the Northborough-Southborough Public Schools. She taught 30% of the time. (Exs. 13, 15)

5. In the school year 2010-11, Mrs. Dubois volunteered in the art room of another teacher, "knowing that she [the other teacher] would be retiring in the very near future."¹ (Pet. prehearing memorandum, p. 1)

6. In the school year 2010-11, Mrs. Dubois attended staff meetings, attended professional development classes,² and assisted with programming, "all additional to my 30% duties,"

¹ Mrs. Dubois did not estimate how many hours she volunteered, and her assertion is not documented in the exhibits.

² This is documented in Exhibit 7.

according to her prehearing memorandum.³ (Pet. prehearing memorandum, p. 2) She asserted that she “was working in the school well beyond the 50% required for membership” in MTRS.⁴ (Pet. prehearing memorandum, p. 2)

7. In the school year 2011-12, Mrs. Dubois was a paid teacher, a substitute teacher, and a school volunteer. (Pet. prehearing memorandum, p. 2) She attended professional development courses and volunteered every Thursday, at least beginning in January 2012. (Ex. 12)

8. On August 27, 2012, Mrs. Dubois’s position with the Northborough-Southborough Public Schools became 100%. (Exs. 4, 5)

9. Also on August 27, 2012, Mrs. Dubois became an MTRS member. (Ex. 20)

10. On October 24, 2019, Mrs. Dubois received an invoice from MTRS to purchase past service as a part-time teacher and substitute for 0.9916 years. (Ex. 13)

11. On September 19, 2023, Mrs. Dubois applied for superannuation retirement benefits. (Ex. 15)

12. Mrs. Dubois was 56 when she applied. (Stipulation) *See also* Ex. 15 (on her application, Mrs. Dubois wrote that she was born in 1967; MTRS redacted her day and month of birth.)

13. On January 10, 2024, MTRS denied her retirement application because as a Tier 2 member, she was eligible to retire when she was 60 years old, and she was not yet 60. (Ex. 6)

14. Mrs. Dubois timely appealed.

³ These assertions are not well documented in the exhibits. It is unknown whether she was expected or required to attend staff meetings and so on. Mrs. Dubois referred to learning something from a teacher on her day off; being interviewed and photographed by that teacher’s third graders; coordinating the school art show with another teacher; and serving on the all-school arts committee, which met after hours twice. (Ex. 8) Those activities do not sound extensive.

⁴ Mrs. Dubois’s assertion about “well beyond the 50%” is not documented in the exhibits.

Discussion

Public retirement system members are placed in two tiers based on when they joined a retirement system. Tier 1 is for members who joined a retirement system before April 2, 2012. Tier 2 is members who joined after that date. A Tier 1 member may retire either after 20 years of creditable service at any age or after 10 years of creditable service at age 55. A Tier 2 member may retire after 10 years of service at age 60. G.L. c. 32, §5(1). The terminology about tiers is informal and does not appear in Chapter 32. (Email from Ashley Freeman, MTRS, Oct. 22, 2024.) The terminology appears on MTRS's website. (Ex. 22)

Mrs. Dubois became an MTRS member on August 27, 2012 (Ex. 20), that is, after April 2, 2012. Therefore:

- she is a Tier 2 member;
- as a Tier 2 member, she cannot receive superannuation retirement benefits before she is 60 years old; and
- because she is younger than 60, she cannot receive superannuation retirement benefits now.

Mrs. Dubois seems to have two arguments. One, because she was working and volunteering in the Northborough-Southborough Public Schools for more than 50% of her time, she *should* have been an MTRS member. (Pet. prehearing memorandum 1, 2 (“...I was working in the school beyond the 50% required for membership to MTRS”). Two, because she purchased creditable service from before she began her MTRS membership, she became an MTRS member retroactively. (Pet. prehearing memorandum 3)

The second argument has no basis in law. An “entitlement to creditable service does not create retroactive membership.” *Lisa Duprey v. State Board of Retirement*, CR-21-0209, n.4

(DALA 2024); *Manning v. Contributory Retirement Appeal Board*, 29 Mass. App. Ct. 253, 254 (1990). In other words, Mrs. Dubois’s purchase, when she was an MTRS member, of creditable service from before she was an MTRS member does not extend her MTRS membership in the past, back to the time of the service that she purchased. Mrs. Dubois is familiar with *Duprey* because she relies on it in her prehearing memorandum. (Pet. memorandum, unnumbered pages)

Mrs. Dubois’s first argument has no basis in law, common sense, or the facts of her case.

Retirement law defines a “teacher” as a teacher (and some other categories of people engaged in other education-related work) who is “*employed*” half-time or more. G.L. c. 32, §1 (emphasis added). Until August 27, 2012, Mrs. Dubois was *employed* as a teacher for 30% of her time. Therefore, she was not a teacher under retirement law and not eligible to join the Massachusetts Teachers’ Retirement System.

Retirement law defines an “employee” as, in part, a person “whose regular *compensation*is *paid* by any political subdivision of the commonwealth.” G.L. c. 32, §1 (emphasis added). As a volunteer, Mrs. Dubois received *no* “compensation.” *Id.* She was not “paid.” *Id.* Therefore, her volunteer work was not employment, she was not an employee, and her volunteer work did not enhance her eligibility for MTRS membership.

Furthermore, 807 CMR 4.02(1) provides:

No individual shall be eligible for membership within the [Massachusetts Teachers’] retirement system, unless...

(b) The individual is covered by a contractual agreement for employment with one or more school committees or boards of trustees or by any combination of such committees and boards;

(c) The contractual agreement requires not less than half-time service as a teacher, as defined in M.G.L. c. 32....

Mrs. Dubois has not provided “a contractual agreement for employment” for her volunteering. Common sense tells us that an employment contract for volunteering is an oxymoron. I doubt that Mrs. Dubois had such a contract.

It should not be necessary to cite statutory and regulatory provisions to establish that when Mrs. Dubois was volunteering, she was not working as a teacher. The common-sense understanding of being a volunteer is being unpaid. A parent who volunteers full-time in a child’s school does not become a full-time school employee and an MTRS member for that reason.

People volunteer for many reasons, including altruism and service to entities and causes. At least one reason why Mrs. Dubois volunteered – that is, one reason that she *donated* her time – was to gain full-time employment. (Pet. prehearing memorandum, p. 1) The reason is not nefarious, but Mrs. Dubois’s volunteering probably led to advantages for her: It probably led to a full-time job for which she got a full-time salary and membership in a retirement plan. Now she wants a further advantage: retirement before age 60, allowing her to collect thousands of dollars for a few additional years. In effect, she is trying to force one entity, MTRS, to compensate her for her optional unpaid work for another entity, the Northborough-Southborough Public Schools.

Furthermore, Mrs. Dubois’s argument fails factually because she has not proved by a preponderance of the evidence that her 30% teaching position and her volunteering was the equivalent of a half-time position, even when her substitute teaching is added.

Mrs. Dubois’s reliance on *Duprey* is unavailing. (Pet. prehearing memorandum, unnumbered pages) In that case, a woman trained for a new position on March 28 and 29, 2012. She got paid for those two days. After a gap of a few days, she began working on April 5, 2012. The Division of Administrative Law Appeals held that her employment and membership in the

retirement system began on March 28, not April 5. Mrs. Dubois does not explain how *Duprey* supports her case. She has not specified a date, earlier than August 27, 2012, on which she supposedly joined MTRS.

It is possible that Mrs. Dubois has advanced other arguments, but I can only do so much in extracting possible arguments from her prehearing memorandum. This is her case to make, *Bagley v. Contributory Retirement Appeal Board*, 397 Mass. 255, 258 (1986), not her case for me to make for her.

Conclusion and Order

MTRS's denial of the petitioner's application for superannuation retirement benefits is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: January 10, 2025