

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law Appeals**

**Lisa Duprey,**  
Petitioner

v.

Docket No. CR-21-0209

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Lisa Duprey, *pro se*

**Appearance for Respondent:**

Yande Lombe, Esq.  
State Board of Retirement  
One Winter St., 8<sup>th</sup> Floor  
Boston, MA 02108

**Administrative Magistrate:**

Timothy M. Pomarole, Esq.

**SUMMARY OF DECISION**

The Petitioner participated in training on March 28 and 29 of 2012. She did not report for work again until the following week, on April 5, 2012, which was her originally scheduled start date and the start date listed on her new member enrollment form. She appeals the decision of the State Board of Retirement denying her request to set the commencement of her membership in the state retirement system as March 28, 2012 rather than April 5, 2012. The Board's decision is reversed. Its assertion that she was not "regularly employed," and thus was not a member of the retirement system, until April 5 is incorrect. Notwithstanding the fact that April 5 was listed as the start date in the Petitioner's new member enrollment form, she participated in (and was paid for) training the previous week. Moreover, the gap of several days between her training and her return to work the following week did not postpone the commencement of her regular employment.

**DECISION**

The Petitioner, Lisa Duprey, appeals the decision of the State Board of Retirement (“Board”) denying her request to set the commencement of her membership in the Massachusetts State Employees’ Retirement System (“MSERS”) as March 28, 2012 (the date on which she started two days of training) rather than April 5, 2012 (her originally scheduled start date and the next date on which she reported to work following her training). This is a difference of only a few days, but resolution of the question is potentially significant because some provisions of the Pension Reform Act, Chapter 176 of the Acts of 2011, apply only to individuals who were members of the MSERS as of April 2, 2012.

I held a hearing on November 6, 2023, at the Division of Administrative Law Appeals (“DALA”), 14 Summer Street, 4th Floor, Malden, MA 02148. The hearing was recorded. I admitted into evidence Exhibits 1-8.

Ms. Duprey testified and called as witnesses:

- Tammy Crockett, the Business Manager/Human Resources at Montachusett Regional Vocational Technical School District (“Montachusett”) and Ms. Duprey’s supervisor; and
- Donna Schaff, Secretary (Admissions) at Montachusett.

The Board did not call any witnesses.

The Board submitted a post-hearing brief on December 8, 2023, whereupon the record was closed. Ms. Duprey did not file a brief.

**FINDINGS OF FACT**

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Duprey was hired as a payroll/benefits assistant for Montachusett. She was

- scheduled to start on April 5, 2012. (Duprey Test.; Crockett Test.; Exhibit 6).<sup>1</sup>
2. Ms. Duprey's new member enrollment form was completed before she started work. (Duprey Test.). It identifies her start date as April 5, 2012 and was signed by Ms. Duprey and Patricia LeBlanc, a Montachusett benefits assistant. (Exhibit 6).<sup>2</sup>
  3. A leave/time-off calendar for Ms. Duprey that was filled out by her predecessor states that Ms. Duprey's start date was April 5, 2012. (Exhibit 8; Duprey Test.).
  4. Ms. Duprey was asked to participate in training on March 28, 2012 and March 29, 2012. This was so she could be trained by the woman she would be replacing, who was set to retire. (Crockett Test.).
  5. Ms. Duprey participated in two full days of training on those dates. (Duprey Test.; Crockett Test.; Schaff Test.; Exhibit 1). Ms. Duprey was trained by her predecessor and learned, among other things, the software she would be using in her new position as a payroll/benefits assistant. Part of her training related to her specific work responsibilities and part of it was generally applicable employee onboarding. (Duprey Test.).<sup>3</sup>
  6. Ms. Duprey was paid for her two days of training, a total of fifteen hours. (Exhibit 5). She also received two days of creditable service for those days. (Exhibit 1).
  7. Ms. Duprey did not work on Friday, March 30, 2012. Nor did she work Monday

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<sup>1</sup> In a March 13, 2012 letter from Superintendent-Director Steven Sharek appointing Ms. Duprey to the position, he stated that it was his understanding that her start date would be April 9, 2012. (Exhibit 8). Based on the other evidence referenced above, I conclude that her scheduled start date was April 5, 2012.

<sup>2</sup> I surmise that Ms. LeBlanc was Ms. Duprey's predecessor at Montachusett.

<sup>3</sup> The precise nature of the training is not critical to my decision in this matter. I would have reached the same conclusion if the training had consisted of general onboarding only.

through Wednesday (April 2 through April 4) of the following week. She worked on her originally scheduled start date, April 5, 2012. (Duprey Test.).

8. In November 2013, a Board employee advised Ms. Duprey that because she received two days of creditable service for March 28, 2012 and March 29, 2012, she could “consider” herself as having entered “the system” prior to April 2, 2012. (Exhibit 1).
9. In February 2020, Ms. Duprey contacted the Board to confirm that her records with the Board reflected a late March 2012 start date. When she was told that the Board’s records reflected a start date of April 5, 2021, Ms. Duprey asked that these records be corrected to reflect the March start date. (Exhibit 2).
10. Tammy Crockett, the business manager at Montachusett, followed up with a February 28, 2020 letter advising the Board that Ms. Duprey had started on March 28, 2012. (Exhibits 3-4). Ms. Crockett sent another letter on July 27, 2020. (Exhibit 5).
11. In a letter dated May 18, 2021, the Board informed Ms. Duprey that her membership date would remain April 5, 2012 and advised her of her appeal rights. (Exhibit 6).
12. Ms. Duprey timely appealed the Board’s decision. (Exhibit 7).

### **CONCLUSION AND ORDER**

To become a member of the MSERS, an individual must be an “an employee” of an eligible entity or employer. 941 CMR 2.03(1)(a). An “employee” is an individual “... who is engaged in duties which require that [her] time be devoted to the service of [the employer] in each year during the ordinary working hours of regular and permanent employees, and who is regularly and permanently employed in such service ...” G.L. c. 32, § 1.

The Board contends that Ms. Duprey was not “regularly employed” by Montachusett until April 5, 2012 and thus could not have become a member of the MSERS until that time. The Board makes two principal arguments.<sup>4</sup>

First, the Board observes that two documents, the new employee enrollment form and the leave/time off calendar, indicate a start date of April 5, 2012. (Respondent’s Post-Hearing Brief, at 5). I do not understand the Board to be arguing that Ms. Duprey is bound by the start date listed in the documentation, notwithstanding the actual facts of the matter.<sup>5</sup> Instead, the Board’s argument seems to be that this evidence shows that her start date was, in fact, April 5, 2012. To be sure, this documentation is at least *some* evidence that Ms. Duprey did not start until April 5, 2012. And in some cases, documentation of this kind may be the best (or only) evidence of when employment commenced. Here, however, I have found that Ms. Duprey participated in two days of training on March 28 and March 29. And the Board, sensibly, does not suggest that employment cannot commence with a training period.

The Board’s second argument appears to be that because there was a gap between Ms. Duprey’s second day of training on March 29 and her return to work on April 5, she was not “regularly employed” until that later date. This argument, too, is unavailing.

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<sup>4</sup> A third argument may be dispatched briefly. The Board notes that an entitlement to creditable service does not create retroactive membership. (Post-Hearing Brief, at 4, 6 (citing *Manning v. CRAB*, 29 Mass. App. Ct. 253, 54 (1990))). That is true, but beside the point. As explained below, Ms. Duprey’s membership was based on the commencement of her regular employment, not on her receipt of creditable service.

<sup>5</sup> Such an argument would have lacked merit. Just as Ms. Duprey and Montachusett could not have unilaterally declared that her start date for purposes of MSERS membership was, say, March 1, the fact that they incorrectly stated that her start date was April 5, 2012 is not controlling if, in fact, her employment commenced earlier than that date, which it did.

The “term ‘regularly employed’ according to its usual meaning refers to continuous employment as distinguished from sporadic, intermittent, or temporary employment.” *Retirement Bd. of Concord v. Colleran*, 34 Mass. App. Ct. 486, 489 (1993); *see also Jouness De Weerd v. City of Springfield*, 295 Mass. 523, 526 (1936) (holding in the context of G.L. c. 41, § 111 that the term “regularly employed” connotes “something of permanence in the employment, as distinguished from that which is occasional or temporary.”).

Employment may be sufficiently continuous to constitute regular employment even if there are gaps or variation in when an employee reports for work. In *Callahan v. Revere Retirement Board*, for example, the member was “regularly employed” even though she “worked part-time, did not work the same number of hours each week, and occasionally took a week or two off of work for an unpaid vacation.” CR-12-523, 2017 WL 5195186, at \*5 (DALA Aug. 25, 2017). Similarly, in *Gorski v. MTRS*, the member, the town counsel for Webster, “worked part of every month for 48 months” and worked fewer than 20 hours during the 41 of those 48 months. CR-18-544, 2022 WL 16921432, at \*1 (DALA Feb. 3, 2022). Although there were apparently days, perhaps a great many days, on which the member did not perform work for the town, he was nonetheless “regularly employed.” *Id.* at \*2.

Here, the modest gap of four workdays between March 29, 2012 and April 5, 2012 did not break the continuity of Ms. Duprey’s employment. There was nothing in either the length of this gap, or in any of the attendant circumstances, that would suggest that her work was “sporadic, intermittent, or temporary.” *Colleran*, 34 Mass. App. Ct. at 489. Ms. Duprey’s two days of training were the *start* of her employment as a payroll/benefits assistant; they were not a separate period of employment. Or, to view it

from a slightly different point of view, it would not make sense to suggest that Ms. Duprey was (very) briefly employed on March 28 and 29, unemployed on March 30 through April 4, and was then employed again in April 5, but in a different job from the one she had for two days the prior week, the purpose of which was to furnish training for this “second” job.

For the foregoing reasons, the decision of the Board is reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Timothy M. Pomarole*

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Timothy M. Pomarole, Esq.  
Administrative Magistrate

Dated: February 9, 2024.