

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

GEORGE FLORENTINE	:	Docket No. CR-21-0236
<i>Petitioner</i>	:	
	:	Date: December 1, 2023
v.	:	
	:	
STATE BOARD OF RETIREMENT	:	
<i>Respondent</i>	:	

Appearance for Petitioner:

George Florentine, *pro se*

Appearance for Respondent:

Yande Lombe, Esq.
State Board of Retirement

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was a tax examiner for the Department of Revenue. Before that, he was an adjunct professor at Bunker Hill Community College. He applied to purchase his contract service as a professor. G.L. c. 32, § 4(1)(s) requires, among other things, that his position as a professor be “substantially similar” to his position as a tax examiner. Whether two positions are substantially similar looks to their core duties. While the Petitioner obviously had to draw from similar knowledge and experience for both positions, their core duties were different. Accordingly, the Board correctly denied his application.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, George Florentine, timely appeals a decision by the Respondent, the State Board of Retirement (“SBR” or “Board”), denying his request to purchase creditable service under G.L. c. 32, § 4(1)(s). I held an in-person hearing on

October 30, 2023. The Petitioner was the only witness. I admitted exhibits 1-9 into evidence without objection. The parties submitted their closing statements, at which point I closed the administrative record.

FINDINGS OF FACT

1. In 1997, the Petitioner began working as a tax examiner II (“TE II”) for the Department of Revenue (“DOR”) and became a member of the retirement system. (Testimony; Ex. 1.)
2. Prior to that, he was an adjunct professor, teaching accounting at Bunker Hill Community College (“BHCC”). He began around 1976 and continued to teach even while working as a TE II. He retired from teaching in 2020. (Testimony; Ex. 1, 3, & 7.)
3. He did not submit a job description of his duties as an adjunct professor, but he explained them at the hearing. The Petitioner did what one typically thinks a professor does. He taught many classes and did the work involved in preparing for, and teaching, those classes: he would design the syllabi, the course assignments, grade homework and tests, and meet with students outside of class. He taught various levels of accounting classes. (Testimony; Ex. 3 & 7.)
4. As a TE II, he worked primarily in the trustee department. A job description explains what a TE does: “represents DOR in direct public dealings; answers telephone inquiries; resolves written inquiries; affects account transactions; provide technical assistance by interpreting and explaining state tax laws, rules, regulations, guidelines, policies and procedures; Audits MA trustee tax returns; researches taxpayer information in connection with audit activities; conducts desk audits that involve various audit issues; prepares audit reports when cases are closed; explains tax issues and findings to taxpayers[.]” (Ex. 5.)

5. The Petitioner’s testimony confirmed these duties and spelled them out in a little more detail. (Testimony; Ex. 5.)
6. Before retiring, he applied to purchase his teaching service under a provision of the retirement statute allowing purchase of prior contract service for a state entity under specified circumstances. (Ex. 1.)
7. The Board denied his request. It explained:

In order to purchase contract service . . . the job description of the contract service position must have been “substantially similar” to the job description you held upon becoming an employee and a member of the [Massachusetts State Employees’ Retirement System]. Decisions involving this provision of the statute have set a narrow standard for what is considered “substantially similar” under the statute. Cases that have allowed service purchases . . . generally require members to maintain the “same core duties” in both roles.

After review, the Board has determined that your role as an Adjunct Professor at BHCC is not “substantially similar” to your role as a Tax Examiner II with the DOR to allow for a service purchase[.] Among other factors, the focus of your position at BHCC was teaching students, while the focus of your position with the Department of Revenue involved tax determination and collection.

(Ex. 9).

DISCUSSION

Pursuant to G.L. c. 32, § 4(1)(s), a member can purchase creditable service for certain prior work as a state contractor. G.L. c. 32, § 4(1)(s); *Yutkins-Kennedy v. State Bd. of Ret.*, CR-19-0171, 2021 WL 9697064 (DALA Oct. 8, 2021); 941 Code of Mass. Regs. § 2.09. However, “the job description of the contract service position must have been substantially similar to the job description the member held upon becoming an employee of the Commonwealth and a member of the [state retirement system].” *Id.* at § 2.09(3)(d); G.L. c. 32, § 4(1)(s). The only issue

in this case is whether the Petitioner’s position as an adjunct professor was “substantially similar” to his position as a TE II. I find that it was not.

“‘Substantially similar’ is not a precise term, but it does not mean identical.” *Sullivan v. SBR*, CR-19-0100, 2023 WL 6195150 (DALA Sep. 15, 2023). What matters are the “core duties” of the two jobs. *Id.*; *Gearan v. State Bd. of Ret.*, CR-17-115 (DALA Jan. 4, 2019). If the core duties are similar enough, the member is entitled to purchase the credit. *Id.*; *Gearan v. State Bd. of Ret.*, CR-17-115 (DALA Jan. 4, 2019). If they are different, then they are not entitled to the credit. *Nagles v. State Bd. of Ret.*, CR-10-307 (DALA Nov. 15, 2013). There is no precise test; each case involves a fact-specific analysis.

Here, it is obvious that the Petitioner’s core duties in his two positions were not substantially similar. In fact, they were not similar at all. At BHCC, he was a teacher, doing what teachers do—prepare for classes, teach, grade assignments, meet with students, etc. At DOR, he did not teach. He did not have students. He did not grade papers. Rather, he was performing tax analysis and audits for businesses and members of the public.

The Petitioner argues that his knowledge from one job informed the other. For example, he would use real world examples from his job as a TE II to teach his students. I have no doubt the two jobs involved a substantial overlap of knowledge. But the “substantially similar” test looks to one’s duties, not the knowledge needed to perform those duties. To borrow an analogy offered by the Board, a coach and player both require similar knowledge and training of their sport. But the core duties of coaching and playing a sport are different.

CONCLUSION AND ORDER

The Board's decision to deny the Petitioner's application to purchase this prior creditable service is **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate