

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Regina Flynn,**  
Petitioner,

No. CR-21-0653

Dated: February 9, 2024

v.

**State Board of Retirement,**  
Respondent.

**Appearance for Petitioner:**  
Regina Flynn (pro se)

**Appearance for Respondent:**  
Yande Lombe, Esq.

**Administrative Magistrate:**  
Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner became a permanent state employee in 2008. She is eligible to purchase retirement credit for her work as a contract employee in 2007. She cannot purchase credit for her work as a contract employee in 2002-2004, because that period did not “immediately preced[e]” the petitioner’s entry into service within the meaning of G.L. c. 32, § 4(1)(s) and 941 C.M.R. § 2.09(3)(e).

**DECISION**

Petitioner Regina Flynn appeals from a decision of the State Board of Retirement denying her request to purchase credit for a period of pre-membership service. The appeal was submitted on the papers. I admit into evidence exhibits marked 1-11.

**Findings of Fact**

I find the following facts:

1. Ms. Flynn has been a professor at Salem State University since 1996. From that year until 2008, Ms. Flynn’s employment was governed by a consecutive series of non-permanent contracts. (Exhibit 2-4.)

2. During portions of her non-permanent employment, Salem State categorized Ms. Flynn as a “full-time temporary” employee.<sup>1</sup> Salem State afforded its full-time temporary employees various employment benefits, such as vacation time and health-insurance coverage. Full-time temporary employees also were eligible to participate in either the state retirement system or the Optional Retirement Program for higher education workers (ORP). Ms. Flynn chose the latter option. (Exhibits 2-4, 11. *See* G.L. c. 15A, § 40.)

3. During the other portions of Ms. Flynn’s non-permanent employment, Salem State categorized her as an “adjunct” instructor. As an adjunct, Ms. Flynn received more limited benefits, was ineligible to participate in a retirement system, and was paid from a subsidiary “03” account. (Exhibits 2-4, 11.)

4. During the academic years pertinent to this appeal, Salem State categorized Ms. Flynn as follows (with each year denoting the academic year that started in that fall):

2002: Adjunct	2005: Full-time temporary
2003: Adjunct	2006: Full-time temporary
2004: Adjunct	2007: Adjunct

(Exhibits 2-4.)

5. In the fall of 2008, Ms. Flynn was hired to a permanent position. She then became a member of the state retirement system. (Exhibit 1.)

6. During 2019, Ms. Flynn applied to purchase credit for her pre-membership service. The application covered the entire period 1996-2008. The board allowed the application only as to the period from September 2007 through May 2008, i.e., Ms. Flynn’s final

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<sup>1</sup> It seems likely that Ms. Flynn was so categorized when she taught full courseloads.

academic year as a non-permanent employee. The board denied the remainder of the application, and Ms. Flynn timely appealed. (Exhibits 1, 5, 7.)

### Analysis

Creditable service is among the variables that determine a public employee's retirement benefits. Ordinarily, an individual is credited with service that he or she performed as an employee of a governmental unit while maintaining membership in a public retirement system. *See* G.L. c. 32, § 4(1)(a).

Specific provisions permit an employee to purchase credit for service that he or she performed before establishing retirement-system membership. The provision at issue here is G.L. c. 32, § 4(1)(s), which applies to a member of the state retirement system “who, immediately preceding the establishment of membership . . . was compensated for service to the commonwealth as a contract employee.” *Id.* In order to make a purchase under § 4(1)(s), the employee must already possess ten years of creditable service, and must have entered state service in substantially the same job that he or she previously performed as a contract employee. *Id.* No more than four years of service are purchasable under this rule. *Id.*

The focus of this appeal is the requirement that service may be purchased only if it occurred “immediately preceding” the member's entry into membership. § 4(1)(s). A board regulation elaborates on this requirement, stating that “‘immediately preceded’ shall mean within 180 calendar days.” 941 C.M.R. § 2.09(3)(e). The regulation adds: “An employee may purchase two consecutive periods of contract service . . . provided that the period between the two periods of contract service does not exceed 180 calendar days.” *Id.* *See generally Kelly v. MTRS*, No. CR-19-137, 2023 WL 6955080 at \*2 (DALA Sept. 8, 2023) (discussing DALA's extreme deference to duly promulgated regulations).

There is no dispute that Ms. Flynn is entitled to purchase credit for 2007, her last academic year of non-permanent employment. On appeal, Ms. Flynn does not press her application with respect to the two preceding years (2005-2006), during which she was a full-time employee with ORP benefits.<sup>2</sup> The dispute concentrates on the three years prior to that (2002-2004), during which Ms. Flynn was categorized as an adjunct.

In § 4(1)(s)'s terms, the legal question presented is whether the service at issue “immediately preced[ed]” Ms. Flynn’s entry into service. The pertinent board regulation translates this statutory condition into slightly different terms. Under that regulation, Ms. Flynn may purchase the disputed years (2002-2004) on top of the agreed-upon year (2007) if those two periods were “consecutive” and the “period between [them] . . . [did] not exceed 180 calendar days.” 941 C.M.R. § 2.09(3)(e).

It is reasonably clear that Ms. Flynn does not satisfy these statutory and regulatory demands. Analyzed under 941 C.M.R. § 2.09(3)(e), the two periods that Ms. Flynn seeks to purchase were not “consecutive,” and they occurred more than 180 days apart. In the statute’s terms, Ms. Flynn’s work in 2002-2004 took place too long before her purchasable service of 2007 to count as “immediately preceding” her entry into service. § 4(1)(s).

It is less clear whether the statute and regulation would have envisioned Ms. Flynn as someone who should be entitled to less than four years of § 4(1)(s) service. Ms. Flynn did not

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<sup>2</sup> In 2011, the Legislature gave ORP participants “1 opportunity” to convert their credit with the ORP into credit with the state retirement system. Acts 2011, c. 176, § 60. The record does not suggest that Ms. Flynn took advantage of that opportunity. *See also Centola v. State Bd. of Ret.*, No. CR-19-507, 2022 WL 19762162 (DALA Aug. 19, 2022). The retirement law generally makes vigilant efforts to limit retirees to one set of retirement benefits arising from each period of work. *See, e.g.*, G.L. c. 32, §§ 3(4), 4(1)(a), (b), (g), (p).

cross back and forth between the public and private sectors. She worked for a single public university throughout. Her pre-membership *work* all immediately and consecutively preceded her entry into membership. It is only the *periods she seeks to purchase* that, due to the quirks of her employment arrangement, fail the immediateness and consecutiveness requirements.

Nonetheless, the governing statute and regulation are not unclear, unworkable, or illogical. *See Harmon v. Commissioner of Correction*, 487 Mass. 470, 479 (2021); *Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 648 (2012).<sup>3</sup>

Ms. Flynn’s final argument is that the board misinformed her about § 4(1)(s)’s demands. But any deficient or erroneous information that a board may provide to its members does not alter those members’ statutorily prescribed rights. *See Clothier v. Teachers’ Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010); *Awad v. Hampshire Cty. Ret. Bd.*, No. CR-08-621, at \*7 (CRAB Dec. 19, 2014). “The government cannot be ‘estopped’ from enforcing the laws correctly.” *Blatt v. State Bd. of Ret.*, No. CR-20-199, 2022 WL 9619034, at \*1 (DALA Aug. 26, 2022).

### Conclusion and Order

In view of the foregoing, the board’s decision is AFFIRMED.

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<sup>3</sup> The parties’ submissions revolve substantially around whether Ms. Flynn was a “contract employee” during her periods of work as a full-time temporary employee. It is not necessary to resolve that question here. The meaning of the term “contract employee” in this context is analyzed in *Young v. Contributory Ret. Appeal Bd.*, 486 Mass. 1 (2020). One plausible reading of *Young* is that contract employees are essentially “workers [who] enter into time-limited contracts to work for the Commonwealth.” *Id.* at 3-4. Ms. Flynn was such a worker throughout her time at Salem State. On the other hand, *Young* lists various typical consequences of contract employment—including ineligibility for retirement benefits—that attached to Ms. Flynn only during her semesters as an adjunct. *Id.*

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate