

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Charles Fox,
Petitioner

Docket No. CR-24-0722

v.

State Board of Retirement,
Respondent

Appearances:

For Petitioner: Charles Fox, pro se

For Respondent: Jennifer J. Hunt, Esq.

Administrative Magistrate:

Judi Goldberg, Esq.

SUMMARY OF DECISION

The petitioner is not entitled to purchase retirement credit for service in out-of-state colleges because G.L. c. 32, § 3(4) prohibits purchase of service when a member is “entitled to receive a retirement allowance or other similar payment” to which a public employer has contributed. *Sullivan v. Massachusetts Teachers’ Ret. Bd.*, CR-07-639, 2021 WL 13406337 (Contributory Ret. App. Bd. Nov. 16, 2012). Both of petitioner’s out-of-state public employers contributed to his 403(b) account.

DECISION

Petitioner Charles Fox timely appealed, under G.L. c. 32, § 16(4), the decision of the State Board of Retirement (Board) to deny his application to purchase retirement credit for ten years of pre-membership work. The parties did not object to having the appeal decided based on their submissions. I admit into evidence Exhibits P1 – P6 and R1 – R6.

Findings of Fact

Based on the evidence in the record and reasonable inferences drawn from it, I make the following findings of fact:

1. In July 2012, Mr. Fox began working for Worcester State University as a professor in the Department of Psychology. (R1, R2.)

2. Mr. Fox has a 403(b) plan with the Teachers Insurance and Annuity Association of America (TIAA). (Petitioner's Appeal of Decision.)

3. On August 1, 2022, Mr. Fox applied to purchase credit for his work at the University of Maryland, Baltimore (UMB) and Wichita State University (WSU). (R2.)¹

Mr. Fox's employment at the University of Maryland, Baltimore

4. From November 1, 1995, to June 30, 1999, Mr. Fox worked as an assistant professor for UMB. (P2.)

5. During his employment at UMB, Mr. Fox was not enrolled in the Maryland Teachers' Pension system. Rather, he chose to participate in the Optional Retirement Plan (ORP), which TIAA managed. In December 2024, Mr. Fox provided the Board with the breakdown of his contribution and UMB's contribution to his TIAA 403(b) account. (R2, R3.)

Mr. Fox's employment at Wichita State University

6. From December 21, 2003, to August 13, 2010, Mr. Fox worked as a professor and associate dean for WSU. (P5.)

7. To help complete his application to the Board, Mr. Fox asked the Kansas Public Employee Retirement System whether he was eligible to receive retirement benefits for his work at WSU. A representative from the Kansas Public Employee Retirement System wrote: "We do not see you in our system. You were probably working with the Kansas Board of Regents when

¹ He had initially applied to purchase credit for this work in 2019 but withdrew that application.

you worked at Wichita State University. You will need to contact them for the information you need.” (P6.)

8. In December 2024, Mr. Fox wrote to the Board that he was waiting for a response from the Kansas Board of Regents to verify that he was not a part of that system; he did not submit any additional information from the Kansas Board of Regents. He also detailed the amounts of his contribution and WSU’s contribution to his TIAA 403(b) account. (R3.)

Mr. Fox’s application to purchase credit for his work

9. On August 2, 2022, Mr. Fox applied to purchase credit for his work at UMB and WSU.

10. As part of his application, Mr. Fox provided a copy of a quarterly retirement savings portfolio statement from his 403(b) account with TIAA. (R3.)

11. The TIAA statement confirmed Mr. Fox’s statements to the Board that his 403(b) accounts included contributions from his out-of-state employers, including contributions to his 403(b) account from the University System of MD Optional Retirement Plan and the Kansas Board of Regents Mandatory Plan. (R3.)

12. On December 23, 2024, the Board denied Mr. Fox’s request to purchase out-of-state teaching time. The Board wrote that information from TIAA and the Maryland State Retirement and Pension System indicated that he participated in retirement plans “funded, at least in part, by employer contributions.” (R4, R5.)

13. Mr. Fox timely appealed the Board’s decision. (R6.)

Analysis

The retirement benefits for a Massachusetts public employee are determined in part by the length of the employee's creditable service. G.L. c. 32, § 5(2). The general rule is that each employee receives credit for the periods of time when they were an employee of a Massachusetts governmental unit and a member of a Massachusetts retirement system. G.L. c. 32, § 4(1)(a). In addition, certain employees may purchase credit for service that otherwise would not count towards retirement benefits. One of these provisions allows college teachers who taught at a public college in another state to purchase credit for their out-of-state service. G.L. c. 32, § 3(4). However, that same provision warns that "no credit shall be allowed . . . for any service on account of which the member shall be entitled to receive a retirement allowance or other similar payment from . . . any other source." The purpose of this rule is to "prevent[] members from receiving double retirement benefits for the same work." *Gregoire v. Massachusetts Teachers' Ret. Sys.*, CR-16-0449, 2021 WL 12298082 (Contributory Ret. App. Bd. Mar. 22, 2021).

In Mr. Fox's case, the Board correctly concluded that Section 3(4) precludes his application to purchase creditable service for his time at UMB and WSU. "[A] future entitlement to distributions from a 403(b) plan, partially funded by another state, prohibits the purchase of creditable service for out-of-state teaching for the same service years under G.L. c. 32, § 3(4)." *Sullivan v. Massachusetts Teachers' Ret. Bd.*, CR-07-639, 2021 WL 13406337 (Contributory Ret. App. Bd. Nov. 16, 2012). See also *Telesco v. State Bd. of Ret.*, CR-24-0313, 2025 WL 561901 (Div. of Admin. Law App. Feb. 14, 2025) (affirming Board's denial of request to purchase service because a "tax advantaged § 403(b) account is a retirement-oriented 'benefit.'"). Mr. Fox has a 403(b) account, partially funded by contributions from UMB and WSU. Allowing Mr. Fox to

purchase service years for which his public employers contributed to his 403(b) account “would defeat the purpose of [G.L. c. 32, § 3(4)] and allow a double benefit.” *Sullivan, supra*.

Conclusion and Order

The decision of the Board is hereby affirmed.

Dated: January 9, 2026

/s/ Judi Goldberg

Judi Goldberg

Administrative Magistrate

DIVISION OF ADMINISTRATIVE LAW APPEALS

14 Summer Street, 4th floor

Malden, MA 02148

Tel: (781) 397-4700

www.mass.gov/dala