

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

EDUARDO FRAGATA,	:	Docket No. CR-23-0263
<i>Petitioner</i>	:	
	:	Date: May 31, 2024
v.	:	
	:	
MASSACHUSETTS TEACHERS’	:	
RETIREMENT SYSTEM	:	
<i>Respondents</i>	:	

Appearances:

For Petitioner: Eduardo Fragata, *pro se*
For Respondents: Salvatore Coco, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner, a vocational teacher, sought to purchase prior work experience during the period of 1990 – 1997. MTRS denied his application. It correctly applied 807 Code of Mass. Regs. § 14.03, which allows the purchase of only the most recent experience, time for which Petitioner was already credited. Additionally, this prior experience was not “required” to obtain his license, another prerequisite to purchasing this prior service. Indeed, the Petitioner did not rely on this prior service when he applied for the license.

DECISION

Petitioner, Eduardo Fragata, timely appeals under G.L. c. 32, § 16(4) the April 10, 2023 decision of Respondent, Massachusetts Teachers’ Retirement System (“MTRS”), that he was ineligible to purchase certain previous vocational service.

On July 5, 2023, DALA informed the parties that this appeal appeared to be one that could be resolved on written submissions pursuant to 801 Code of Mass. Regs. § 1.01(10)(c) and ordered them to submit legal memoranda and proposed exhibits. Neither party objected to the magistrate’s order. Mr. Fragata submitted a memorandum and five attachments, which I have

labelled Exhibits P1-P5. On January 25, 2024, MTRS submitted a memorandum and four additional exhibits, which have been relabeled R1 - R4. I also marked MTRS's denial letter, and the Petitioner's appeal letter, as P6 and P7. I now admit these exhibits into evidence.

FINDINGS OF FACT

1. The Petitioner is a longtime engineer. (Exs. P1-P5.)
2. From 1990 until March 1997, the Petitioner was employed as a boiler operator and became an Operating Engineer for the Cliftex Corporation. (Ex. P1.)
3. From September 22, 1997 through September 7, 2004, the Petitioner was employed with the New Bedford Regional Vocational Technical High School (New Bedford Tech) in the facilities department. He was a member of the New Bedford Retirement System. (Exs. P7, R2 & R4.)
4. In 2004, he became a vocational teacher at New Bedford Tech teaching steam engineering. He then joined the MTRS and his service credit from New Bedford transferred over. (Exs. R2 & R3.)
5. In June 2020, the Petitioner applied to purchase his prior vocational experience. The form asked when he rendered the trade service used to determine his eligibility. The Petitioner wrote October 2, 1990 until November 2, 1996. (Ex. R3.)
6. When someone applies for a vocational license, they must have a certain amount of prior professional experience in the relevant field. 603 Code of Mass. Regulations § 4.07.
7. MTRS reached out to the Department of Elementary and Secondary Education ("DESE") to ask about the Petitioner's credentialing and what prior professional experience he relied on. DESE explained that it issued his preliminary license in 2004 and relied on the Petitioner's facilities experience at New Bedford Tech from 1997-2004. (Ex. R4.)

8. MTRS ultimately denied the Petitioner's application noting that "since [he was] a member of the New Bedford Retirement Board during this period of trade service and are already receiving full-time credit, this service is ineligible for purchase." Additionally, MTRS explained that it can rely only on records from DESE in these types of cases, and DESE did not have any records other than his service at New Bedford Tech. Finally, the letter concluded that a member is eligible to purchase only the most recent three years reflected in the DESE records. Here, that would be his last three years at New Bedford Tech for which, again, he already received credit. (Ex. P6.)

9. In his appeal letter, the Petitioner confirmed that he relied on his time at New Bedford Tech in procuring his license because that was "easier" and why he "chose that route." (Ex. P7.)

DISCUSSION

Licensed vocational teachers may purchase up to three years of creditable service "for any period or periods of prior work experience in the occupational field in which the member became a vocational-technical teacher and *which was required* as a condition of the member's employment and licensure under regulations of the department of education." G.L. c. 32 § 4(1)(h^{1/2}) (emphasis added). Specifically, a member may purchase only "up to three years" of "the most recent eligible years to be purchased." 807 Code Mass Regs. § 14.03. Service not verified and reflected in DESE's records cannot be purchased. *Id.*

The Petitioner is seeking to purchase his 1990 to 1997 service as a steam engineer. When he applied for his license, he did not rely on this work to support his application. Therefore, DESE has no record of it. MTRS cannot not rely on prior service that DESE does not have on record. The Petitioner acknowledges that the work experience he used for his licensing requirement was his work in facilities at New Bedford Tech because it was "easier" to do so.

DESE did not receive or require documentation regarding the Petitioner's Cliftex Corporation experience to grant his license. Because this experience was not "required" as a condition for licensure, and because DESE has no record of it, it is ineligible for purchase.

In any event, even if this employment had been available, a member can purchase only the three most recent eligible years of experience. *See Holbrook v. Massachusetts Teacher's Retirement System*, CR-20-0147, 2023 WL 8643783 (DALA Dec. 8, 2023); *Hartung v. Massachusetts Teacher's Retirement System*, CR-22-0194 & 0195, 2023 WL 7213152 (DALA Oct. 27, 2023). Here, the most recent eligible years were the three immediately preceding his application (2001 – 2004). However, the Petitioner was already a member of a retirement system during those years and thus has already received credit for that service. Accordingly, he could not receive credit for that service again. *Holbrook*; *Hartung*; 807 Code Mass Regs. § 14.03; *see* G.L. c. 32, § 4(1)(a) ("in no event shall [a member in service] be credited with more than one year of creditable service for all such membership service rendered during any one calendar year").

CONCLUSION

MTRS's decision denying the Petitioner's application is **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate