

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Edward Fratto,
Petitioner,

No. CR-24-0372

Dated: April 25, 2025

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Edward Fratto (pro se)

For Respondent: John Durgin, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner was not initially entitled to retirement credit for a period of temporary or provisional work. He cannot purchase credit for that period now, because he is no longer publicly employed and is already receiving a retirement allowance.

DECISION

Petitioner Edward Fratto appeals from a decision of the State Board of Retirement (board) declining his request to purchase retirement credit for a five-month period of work in 1981. On Mr. Fratto's motion, the appeal was submitted on the papers.¹ I admit into evidence exhibits marked 1-24 in the case file.²

Findings of Fact

I find the following facts.

¹ If the board intended through certain statements in its memorandum to seek reconsideration of the order submitting the appeal on the papers, the current decision moots that request.

² Exhibits 1-22 were marked by the parties. Exhibits 23-24 are recent memoranda filed by Mr. Fratto and the board, respectively. They include material representations that I accept and rely upon. *See infra* p. 2, ¶ 5 and p. 3, note 3.

1. Mr. Fratto began working for a predecessor to the Massachusetts Emergency Management Agency (MEMA) in March 1981. He remained there for thirteen years, leaving for the private sector in August 1994. (Exhibit 21.)

2. Mr. Fratto retired for superannuation effective in October 2021. Around that time, the board furnished Mr. Fratto with a pension data summary sheet. The sheet described Mr. Fratto's creditable service for retirement purposes as including his first four months at MEMA (March-June 1981), skipping the next five months (July-November 1981), and resuming after that (from December 1981 onward). (Exhibits 1, 17.)

3. Correspondence followed among Mr. Fratto, the board, and MEMA. The board explained that it had not received retirement contributions for the five missing months of work. The board asked MEMA to certify that the missing contributions were the result of a "payroll error." MEMA provided an uninformative response. (Exhibits 2-10, 18.)

4. During 2024, the board formally declined to allow Mr. Fratto to purchase retirement credit for his five missing months. The board explained that "[MEMA] did not provide the information necessary for the Board to process the request." Mr. Fratto timely appealed. (Exhibits 12, 16.)

5. While the appeal was pending, the board located certain of Mr. Fratto's employment records for 1981-1982. Checkmarks on those records describe Mr. Fratto's employment status as "Temporary," "Temp.," and "Prov. Appt." Mr. Fratto does not deny that his position was temporary or provisional during at least his first six months of work, and I so find. (Exhibits 19-21, 23.)

Analysis

A public employee's retirement benefits are determined in part by the employee's tally of creditable service. *See* G.L. c. 32, § 5(2)(a). Generally speaking, employees are credited with

the periods during which they worked for Massachusetts governmental units while maintaining membership in Massachusetts retirement systems. *See id.* § 4(1)(a).

A special rule applies to employees who initially are hired “on a . . . provisional [or] temporary . . . basis.” G.L. c. 32, § 3(2)(a)(iv). Such employees become members only “upon the completion of six calendar months of service.” *Id.* Given this rule, the following points of fact are now reasonably clear: Mr. Fratto should not have been making retirement contributions immediately upon starting to work for MEMA; MEMA erred by withholding contributions from him in March-June 1981; MEMA then alleviated the error by refraining from taking contributions from Mr. Fratto in July-November 1981. To the extent that there is an imperfect alignment between Mr. Fratto’s period of provisional or temporary work and his period of missing contributions, the discrepancy works in Mr. Fratto’s favor.³

In specified circumstances, employees who begin their careers in provisional or temporary roles may later purchase retirement credit for the provisional or temporary period. *See* G.L. c. 32, §§ 3(5), 4(2)(c). Two related problems make Mr. Fratto ineligible for such a purchase. The first is that the pertinent statutes allow applications under them to be submitted only by individuals who remain publicly employed. *See Zavaglia v. Gloucester Ret. Bd.*, No. CR-09-459, 2015 WL 14085596 (Contributory Ret. App. Bd. Apr. 13, 2015); *Cohen v. Massachusetts Teachers’ Ret. Syst.*, No. CR-20-203 (Div. Admin. Law App. Nov. 5, 2021). The second is that those statutes require the purchase price to be paid “before the date any retirement

³ The board represents in a recent submission that “Mr. Fratto may expect his benefits to remain unchanged indefinitely in the event of an affirmance of the Board’s decision.” (Exhibit 24.) I rely on that representation to decide the appeal on the current record rather than requiring the board to issue a new decision. *See generally Trustees of Bos. Coll. v. Boston Acad. of the Sacred Heart, Inc.*, 103 Mass. App. Ct. 83, 93-94 (2023); *Temple Univ. Hosp., Inc. v. National Lab. Rels. Bd.*, 929 F.3d 729, 734-37 (D.C. Cir. 2019).

allowance becomes effective.” §§ 3(5), 4(2)(c). Mr. Fratto is no longer publicly employed, and he already is receiving a retirement allowance.

Mr. Fratto argues that his predicament is unfair: in essence, he was not told when he left MEMA that he was thereby losing his opportunity to buy back several months’ worth of credit. But entitlements under the public retirement law are prescribed by strict statutory provisions. Any deficiencies in the information provided to a member cannot alter the member’s entitlements. *See Clothier v. Teachers’ Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010). And administrative tribunals have no power to overrule or sidestep statutory rules on the basis of fairness-related or sympathy-related concerns. *See Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 446, 450-51 (2006).

Conclusion and Order

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

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate