

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Susan Gilson,
Petitioner,

No. CR-23-0617

Dated: September 20, 2024

v.

**Massachusetts Teachers' Retirement
System,**

Respondent.

Appearances:

For Petitioner: Susan Gilson (pro se)

For Respondent: Lori Curtis Krusell, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner worked as a teacher in another state, took an extended leave of absence, and then joined the respondent retirement system. She is not entitled to purchase retirement credit for her leave of absence, because she was not then performing "service," G.L. c. 32, § 3(4), or "the duties of a teacher," 807 C.M.R. § 19.01.

DECISION

Petitioner Susan Gilson, Ph.D. appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) denying in part her application to purchase credit for pre-membership service out of state. The appeal was submitted on the papers without objection. I admit into evidence exhibits marked 1-11.

Findings of Fact

I find the following facts.

1. Dr. Gilson is an educator. From August 1992 until June 2001, she taught in the public schools of Connecticut. She was employed part time during the first year of that period and full time after that. (Exhibits 2-4, 6.)

2. From August 2001 until June 2003, Dr. Gilson took an unpaid leave of absence to complete her doctorate. During that period, Dr. Gilson performed a twenty-one-day unpaid internship in a Massachusetts school system.¹ (Exhibits 2-3, 6-7.)

3. Dr. Gilson has been a member of MTRS since July 2003. During 2023, she filed an application to purchase Massachusetts retirement credit for her pre-membership work in Connecticut. She identified the purchase period as running through June 2003, the end of her leave of absence. (Exhibits 3, 5.)

4. MTRS allowed Dr. Gilson to purchase retirement credit for her service in the years 1992-2001. In an appealable decision, MTRS declined to allow Dr. Gilson to purchase credit for her leave of absence in 2001-2003. Dr. Gilson filed a timely notice of appeal, in which she also contested MTRS's determination that she may purchase only prorated credit for her part-time work in 1992. (Exhibits 1, 2, 4.)

Analysis

Creditable service is among the variables that determine the retirement benefits of Massachusetts public employees. Ordinarily, employees are credited with periods during which they worked for Massachusetts governmental units while maintaining membership in Massachusetts public retirement systems. *See* G.L. c. 32, § 4(1)(a).

Specific provisions permit employees to purchase credit for pre-membership work. Among them is G.L. c. 32, § 3(4), which covers teachers who "rendered service in any other state for any previous period as a teacher . . . in the public day schools." "Service" means

¹ In connection with her leave of absence, Dr. Gilson eventually paid for and received one year's worth of Connecticut retirement credit from her Connecticut retirement system. The records suggests that the Connecticut system is funded by employee contributions only, and that Dr. Gilson is or will be eligible to receive a separate pension there. (Exhibit 3.)

“service as an employee . . . for which regular compensation is paid.” *Id.* § 1.² An implementing MTRS regulation restricts § 3(4) purchases to periods when the teacher “performed the duties of a teacher.” 807 C.M.R. § 19.01.

These provisions do not permit Dr. Gilson to purchase credit for her two years of unpaid leave. Throughout that period, she received no “regular compensation” for employment services. § 3(4). Also, during all but twenty-one days, Dr. Gilson did not “perform[] the duties of a teacher.” § 19.01.³ *See also Knight v. Massachusetts Teachers' Ret. Syst.*, No. CR-96-29, at *6 (DALA Mar. 30, 1998).

It is not entirely clear whether Ms. Gilson continues to press her request to purchase full credit for the period during which she worked part time. Regardless, the request is not meritorious. With regard to “cases involving part-time . . . service,” each retirement system is authorized, “under appropriate rules and regulations . . . [to] fix and determine the amount of creditable prior service, if any . . . of any . . . employee who becomes a member.” G.L. c. 32, § 4(2)(b). MTRS’s pertinent regulations make reasonably clear its intention to prorate the credit available for all periods of service, whether before or after the member’s establishment of membership. *See* 807 C.M.R. §§ 3.03-3.04.⁴

² At least one aspect of § 1’s definition of the word “teacher” does not transpose logically to the context of § 3(4). *See Weston v. Contributory Ret. Appeal Bd.*, 76 Mass. App. Ct. 475 (2010) (discussing § 1’s demand’s for employment by “school committees or boards of trustees”). There is no analogous reason to refrain from applying § 1’s definition of “service” here. *See also Squeglia v. Massachusetts Teachers' Ret. Syst.*, No. CR-98-169, at *3 (CRAB May 2, 2000), *rev'd on other grounds*, 13 Mass. L. Rptr. 106 (Suffolk Super. 2001).

³ It is not necessary to determine here whether volunteer work at an internship qualifies as teaching “duties.” *Cf. Moran v. Brockton Ret. Bd.*, No. CR-20-332, 2021 WL 9697057, at *3 (DALA June 18, 2021).

⁴ However, read in a rigidly literal manner, these regulations might be thought to concentrate on work in Massachusetts. They could stand to be further clarified with respect to their application to pre-membership work out-of-state.

Conclusion and Order

In view of the foregoing, MTRS's decision is AFFIRMED.⁵

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

⁵ In her most recent submission, Dr. Gilson raises the new issue of whether MTRS was correct to prorate her purchasable service for the school year 1997 (to 99%). The issue was not the subject of MTRS's appealable decision, was not identified in Dr. Gilson's notice of appeal, and consequently was not analyzed in MTRS's brief. Further proceedings to adjudicate this belated claim within the current docket would not advance fairness and efficiency. *See Cedarquist v. Bristol Cty. Ret. Syst.*, No. CR-15-232, at *11-12 (DALA June 29, 2018). That said, MTRS is directed to review Dr. Gilson's argument and exhibits and thereafter either to amend her purchase invoice with respect to 1997 or to issue an appealable decision on that point.