

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Stacy Harris,
Petitioner

Docket No. CR-24-0670

v.

State Board of Retirement,
Respondent

Appearances:

For Petitioner: Stacy Harris, pro se

For Respondent: Yande Lombe, Esq.

Administrative Magistrate:

Judi Goldberg

SUMMARY OF DECISION

Petitioner appealed from respondent's denial of her request to retire with ten years of creditable service. The time petitioner spent as a provisional employee at the beginning of her state employment does not count towards her creditable service. As a result, petitioner has less than ten years of creditable service. Respondent's denial of her request is therefore affirmed.

DECISION

Petitioner Stacy Harris timely appealed, under G.L. c. 32, § 16(4), respondent State Board of Retirement's (SBR) denial of her request to retire with ten years of creditable service. *See id.* §§ 5, 10. I held and recorded a virtual hearing on May 18, 2026, during which Ms. Harris was the only witness. At the beginning of the hearing, the SBR indicated that it had been unable to obtain all the documents that it requested from Ms. Harris's former employer. The parties had the option of continuing with the hearing or rescheduling; they both chose to continue with the hearing. During the hearing, Ms. Harris realized that she needed more information relating to one of the exhibits to understand its impact on her creditable service. Thus, during the hearing I

admitted the SBR's exhibits 1-6 and Ms. Harris's exhibits A-B into the record with the explicit understanding that the record would remain open so that the parties could supplement their submissions after the hearing. Over the next few months, both parties worked diligently to obtain additional information. I admitted the documents they obtained as exhibits 7-12. After receiving the parties' supplemental submissions, I closed the administrative record on September 22, 2026.

Findings of Fact

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

1. Stacy Harris worked for the Department of Public Health (DPH) AIDS program, educating and training the public and community agencies. (Ex. 10; Testimony.)
2. Ms. Harris began work with DPH on August 27, 1989. (Exs. 2, 8.)
3. Ms. Harris became a member in, and began contributing to, the SBR in March 1990. (Ex. 11.)
4. Ms. Harris's employment history record indicates that her "position status" over the years was "PROV UNOWN" and, in a few instances, "VAC UNOWN." (Ex. 8.)
5. Ms. Harris submitted an affidavit detailing her conversations with staff at the Executive Office of Health and Human Services (EOHHS), which oversees DPH. Ms. Harris learned that "PROV" stands for a "provisional appointment." She also learned that during the time when she was hired at DPH, employees were considered provisional (on probation) for several months and did not pay into or join the retirement system during their provisional period. EOHHS staff told Ms. Harris that employees were notified that they had the opportunity to buy back the time

during which they were provisional employees; Ms. Harris denies that she received such a letter.¹ Finally, Ms. Harris learned that EOHHS did not know why Ms. Harris's employment history record listed "PROV UNOWN" for most of her work at DPH. (Ex. 12.)

6. Ms. Harris was off payroll for maternity leave for 26 days from the pay period beginning October 24, 1999, through the pay period starting January 2, 2000. (Exs. 1, 5.)

7. Ms. Harris was also out on a 30-day approved unpaid leave of absence during February 2000 and did not contribute to the SBR for that month. (Exs. 1, 6, 11.)

8. Ms. Harris and the SBR agree that she left state service in March 2000; Ms. Harris says that she left on March 10, 2000, and the SBR says that she left on March 3, 2000. (Exs. 1, 2, 5, 6.) This difference is not material to the outcome of this case.

9. Before Ms. Harris left DPH, her understanding was that she had completed ten years of service. She would not have left her position knowing that she was 23 days shy of being vested. (Testimony.)

10. On September 28, 2021, Ms. Harris inquired about, and the SBR provided her with, an estimate of her potential retirement benefits. The SBR correspondence indicated that Ms. Harris's service had "been verified" at ten years. That correspondence included a disclaimer that it was an estimate and that the SBR would determine her eligibility at the time of her retirement. In addition to the form letter, the SBR correspondence included a personalized note to Ms. Harris:

Stacy – It took far too long for us to verify your service – please accept our apologies. Enclosed are 2 other estimates for your 2023 & 2024 birthdates. You would not want to wait any longer than age 65 to start collecting a benefit. I hope this information helps. I am retiring on 10/1 so will not be available to answer any

¹ As noted below, whether Ms. Harris received a letter is not dispositive and need not be resolved.

questions, but your service was credited through 1/22/2000, and then you were granted 30 days for an approved, unpaid leave of absence, giving you the necessary 10 years.

(Ex. 4.)

11. On January 17, 2024, Ms. Harris applied for retirement benefits. (Ex. 3.)

12. After she applied for retirement, the SBR provided a detailed explanation of her service and why it determined that she had 9 years, 11 months, and 7 days of creditable service, using a start date of February 21, 1990. (Ex. 1.)

13. The SBR determined that Ms. Harris is ineligible for retirement benefits and denied her application on November 4, 2024, because her service history shows less than 10 years of work. (Ex. 1.)

14. Ms. Harris timely appealed from SBR's denial. (Ex. 2.)

Analysis

As the petitioner, Ms. Harris has the burden to demonstrate by a preponderance of the evidence that she is entitled to a retirement benefit. *See, e.g., Byrne v. Massachusetts Teachers' Ret. Sys.*, CR-15-609, 2018 WL 1473269 (Div. Admin. Law App. Jan. 26, 2018). For a member of a retirement system to be eligible for a retirement allowance, the member must have at least ten years of creditable service and have reached the minimum required age. G.L. c. 32, §§ 5, 10.² Thus, Ms. Harris has the burden to prove that she has at least ten years of creditable service.

² If a member leaves state service before they have reached retirement age, the member may defer retirement after termination of service and apply later to retire. G.L. c. 32, § 10(3). This is applicable to Ms. Harris; she left state service in 2000 and sought to retire in 2024.

Generally, employees receive credit for the time during which they worked for a Massachusetts governmental unit while maintaining membership in a Massachusetts retirement System. *Id.* § 4(1)(a). However, employees who begin their work with a governmental unit on a “provisional [or] temporary” basis become members of a retirement system only when they complete six calendar months of service. *Id.* § 3(2)(a)(iv). In light of this statutory rule, the facts underlying Ms. Harris’s employment history come more sharply into focus. DPH hired Ms. Harris at the end of August 1989 as a provisional employee. Consistent with the rule stated above, she became a member of, and began contributing to, the SBR in February 1990. Based on when she joined the SBR, she had nine years, eleven months, and seven days of creditable service.

After both Ms. Harris and counsel for the SBR spent several months gathering additional information to try and satisfy her burden, Ms. Harris does not now contest how the SBR calculated the amount of her creditable service. Rather, she argues that the documents relating to her employment list her as a “PROV” employee for most of her employment, which is confusing and appears to contradict the information she obtained about what “PROV” means; she never received information about buying back her provisional service; and she relied on DPH’s assurance and the SBR’s letter that “verified” ten years of creditable service.

Ms. Harris is correct in that the employment history record lists her “POSSTAT,” or position status, as “PROV UNOWN” for most of her years at DPH. (Ex. 8.) Although she was unaware of it at the time, she does not contest that DPH initially hired her in a provisional status. And the information that she recently gathered confirms that when an employee was on a provisional status, the employee did not pay into the retirement system. I infer that the fact that the “PROV” status followed her through her employment, many years past the six-month

provisional time, was a clerical error. Indeed, she became a member of the SBR in February 1990 – six months after she began working for DPH – despite this notation, which supports the conclusion that it was a clerical error and that her provisional status ended.

Employees like Ms. Harris who did not pay into the retirement system while on provisional status reportedly received a letter explaining that they could purchase retirement credit for the provisional period. G.L. c. 32, §§ 3(5), 4(2)(c). Ms. Harris states that she did not receive such a letter. She and the SBR both tried to obtain her personnel file from EOHHS, which might have contained a copy of that letter, but the file was unavailable due to the passage of time. As noted above, whether she received that letter is not now dispositive; the end result is that she did not purchase retirement credit for the provisional time. *See Bien-Aime v. State Bd. of Ret.*, CR-26-0049, 2026 WL 1680650, at *2 (Div. Admin. L. App. June 5, 2026) (“In cases under most provisions of the retirement law, it makes no analytical difference whether a member has received personalized notice about his or her entitlements.”)

If she could now purchase that retirement credit, she could potentially reach or exceed the ten-year threshold. However, “in the usual case, purchases of prior service may only be made at a time when the purchaser is an active member of a retirement system – i.e., at a time when [they are] still working for a governmental entity that participates in a retirement system.” *Zavaglia v. Gloucester Ret. Bd.*, No. CR-09-459, 2015 WL 14085596, at *1 (Contributory Ret. App. Bd. Apr. 13, 2015). As Ms. Harris is not an active member of a retirement system, this option is not available to her.

Finally, Ms. Harris argues that she relied on her understanding from DPH that she had 10 years of service along with the SBR’s letter that “verified” ten years of creditable service.

However, Chapter 32 “defines and limits the benefits to which . . . retirees are entitled, [and] those benefits are a legal determination that may not be enlarged, even by an erroneous interpretation by [the SBR] or any of its employees.” *Clothier v. Teachers’ Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010).

Conclusion and Order

Ms. Harris had the burden of proving her entitlement to receive benefits under Chapter 32. For the reasons set forth above, despite her best efforts with the assistance of counsel for the SBR, she did not satisfy her burden. The decision of the SBR is therefore affirmed.

Dated: October 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