

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

JOHN HOLBROOK,
Petitioner

Docket No. CR-20-0147

v.

Date: December 8, 2023

MASSACHUSETTS TEACHERS'
RETIREMENT SYSTEM
Respondent

Appearance for Petitioner:

Quesiyah Ali, *Esq.*
Massachusetts Teachers Association

Appearance for Respondent:

Salvatore Coco, *Esq.*
Massachusetts Teachers' Retirement System

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner became a vocational teacher in 1993. Before that, from 1974 until March 1993, he was employed in the automotive technology field; from 1992 to March 1993, he was also occasionally a substitute teacher in the Quincy school system. In 2006, the Petitioner was allowed to purchase three years of creditable service for his most recent vocational work experience, which spanned from 1990 through 1993. G.L. c. 32 § 4(1)(h1/2); 807 Code Mass. Regs. § 14.03. He later applied to purchase his prior service as a substitute teacher for some of the same time period. However, MTRS correctly denied his application because he had already received creditable service for that time period. G.L. c. 32, § 4(1)(a); 807 Code Mass. Regs. § 14.04.

INTRODUCTION

The Petitioner, John Holbrook, timely appeals a decision by the Respondent, Massachusetts Teachers' Retirement System ("MTRS"), denying his application to purchase his previous substitute teacher service. DALA ordered the Petitioner to show cause why the matter

should not be dismissed. He responded and submitted a memorandum, along with four exhibits and an affidavit. DALA informed the parties that this appeal appeared to be one that could be resolved on written submissions pursuant to 801 Code Mass. Regs. § 1.01(10)(c). DALA accepted the Petitioner's memorandum and exhibits from his show cause response as his memorandum. On June 5, 2023, MTRS submitted a memorandum, and three additional exhibits. I now admit the parties' exhibits into evidence as exhibits 1-7 and admit the affidavit as exhibit 8.

FINDINGS OF FACT

1. The Petitioner joined the MTRS on March 19, 1993 when he became a vocational teacher in Quincy. (Ex. 1.)
2. Before that, from 1974 until March 1993, he was employed in the automotive technology field. (Ex. 1.)
3. While employed in that field, from October 1992 to March 1993 he was also a substitute for the Quincy Public Schools. (Ex. 3.)
4. In 2006, he applied to purchase creditable service for his prior vocational experience. He relied on his trade service between 1974 and March 1993. (Ex. 1.)
5. He was allowed to purchase his three most recent years of service. He received an invoice which very specifically indicated the period being purchased was from March 19, 1990 through March 18, 1993. He thereafter paid the invoice and was credited with that time—he received the maximum credit allowed: a full three years. (Exs. 2, 5-7.)
6. In 2019, the Petitioner applied to purchase his prior substitute teaching service from 1992 through March 1993, which overlapped with his prior vocational experience. (Ex. 3.)

7. MTRS denied his request: “Unfortunately, since you already purchased that same period of service as a vocational experience service purchase (March 1990 to March 1993) in December 2006, we must deny your request at this time.” (Ex. 4.)

DISCUSSION

The Petitioner was a vocational teacher in Quincy. The Petitioner was able to purchase creditable service for his work prior to becoming a vocational teacher. G.L. c. 32 § 4(1)(h1/2); 807 Code Mass. Regs. § 14.03. The Petitioner worked in the automotive technology field and his experience was used as a condition for his licensure. The creditable service purchased spanned March 19, 1990 through March 18, 1993. From October 1992 through March 1993, the Petitioner was also a substitute teacher. Although a member is generally eligible to purchase prior substitute service under G.L. c. 32 § 3(5), the Petitioner was denied this request because he had already received creditable service for that time period—his vocational experience pursuant to G.L. c. 32 § 4(1)(h1/2).

The first issue is whether the application to purchase three years of vocational experience should apply to the most recent years of experience (here, 1990-1993), when the Petitioner had work experience beyond that time period. For example, if he had received credit for the years 1989-1992, then theoretically he would have been eligible to purchase his substitute time from 1992-1993.

The Petitioner contends that he was not given the option to select which dates he wished to purchase in his vocational application. He argues the statute allows credit for any period of prior experience:

“Any member . . . may receive 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)(h1/2). Thus, he urges, MTRS’s use of the years 1990-1993 was for administrative convenience only and otherwise arbitrary. MTRS responds by explaining it was following 807 Code Mass. Regs. § 14.03. That regulation states that “[t]he years to be purchased will be the period (up to three years) reflected in Department of Elementary and Secondary Education records as the service qualifying the member for vocational certification, *the most recent eligible years to be purchased first.*” *Ibid.* (emphasis added.)

The Petitioner did not dispute MTRS’s decision at the time. Instead, he accepted it and paid the invoice for the credit. It is doubtful we have jurisdiction to entertain this late argument in this appeal, coming 17 years after the actions occurred. That said, MTRS’s decision was not arbitrary as a general matter. Vocational service purchases are subject to buyback interest going back to the dates being purchased. G.L. c. 32, § 3(5). This means that the purchases of older dates will have more interest charged. Because the dates being used to purchase prior vocational experience determine the amount of interest being charged, the use of the most recent dates serves a valuable purpose for the member by keeping the interest payment down. And in any event, MTRS was following its regulation that instructs it to use the most recent eligible years. 807 Code Mass. Regs. § 14.03; *Hartung v. MTRS*, CR22-0194 & 0195, 2023 WL 7213152 (DALA Oct. 27, 2023).

Having credited the Petitioner with service from 1990-1993, MTRS later rejected his request to purchase different prior service—his substitute teaching—for that same time period. G.L. c. 32, § 4(1)(a). Section 4(1)(a) states that “in no event shall [a member] be credited with more than one year of previous creditable service for all such *membership service* rendered during any one calendar year.” (Emphasis added.) The Petitioner argues that § 4(1)(a)’s

prohibition on “double credit” for membership services provided during one calendar year should not apply to the purchased vocational service because the vocational service under § 4(1)(h1/2) is not “membership service”; rather, it is “creditable service.”

To be sure, membership service is a narrower concept than creditable service. Creditable service is “broader [and includes] all membership service, prior service and other service for which credit is allowable to any member[.]” *Manning v. CRAB*, 29 Mass. App. Ct. 253, 256 (1990), quoting G. L. c. 32, § 1. Prior vocational service is considered creditable service but not membership service; it does not create a new membership start date nor create expectations in the retirement system relating to the time of the purchased creditable service that did not exist when the member joined the retirement system. *Ibid.*

Thus, under the Petitioner’s theory, a member could not receive more than one year’s worth of creditable service if they were already credited one year’s worth of membership service; but a member could receive more than one year’s worth of creditable service for any year in which they were not credited with membership service. Here, the Petitioner did not earn membership service from 1992-1993; instead, he bought one year of creditable service for that time. So, if there is additional creditable service available for that same time period, he believes he should be allowed to purchase that too.

The Petitioner’s argument is creative. Yet, while I have doubts about such an interpretation, I need not dwell on it because it is nevertheless contrary to 807 Code Mass. Regs. § 14.04. That regulation states that “consistent with M.G.L. c. 32, § 4(1)(a), a member cannot purchase creditable service for periods that have been purchased under another service purchase provision or have been credited as membership service with a contributory retirement board.” Petitioner asks us to invalidate this regulation because it treats his non-member service as

member service and is thus *ultra vires*. But DALA does not have jurisdiction to declare a regulation void. *Salisbury Nursing Rehabilitation Center, Inc. v. DALA*, 448 Mass. 365, 374-376, (2007) (DALA “is constituted to hear challenges to individual rate calculations, not to hear substantive attacks on the underlying regulations.”) (citations omitted); *Sullivan v. State Bd. of Ret.*, CR-19-0100, 2023 WL 6195150 (DALA Sep. 15, 2023). Accordingly, MTRS properly applied a valid regulation.

CONCLUSION AND ORDER

The Petitioner cannot circumvent the statutory and regulatory prevention on double credit. MTRS’s decision denying this credit is **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate