

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Theresa Howard,
Petitioner,

No. CR-24-0568

Dated: March 14, 2025

v.

State Board of Retirement,
Respondent.

ORDER OF DISMISSAL

This is an appeal from a decision of the State Board of Retirement (board) denying petitioner Theresa Howard’s application to purchase retirement credit for a period of contract service. *See* G.L. c. 32, § 4(1)(s). The board explained in its decision that “the employing agency has been unable to provide contracts, personnel action forms or requisitions for [the pertinent] time period; there, we are unable to approve your request.”

A September 2024 scheduling order established deadlines for the parties to submit prehearing memoranda and proposed exhibits. Ms. Howard’s deadline was in December 2024. She did not comply with that deadline. In January 2025, the board moved to dismiss based on failure to prosecute. First Magistrate Rooney established a February 2025 deadline for Ms. Howard’s response, writing:

Ms. Howard filed payroll documents and correspondence . . . when she filed her appeal. What is missing is a memo from her explaining why she believes she is entitled to buy back service when the State Board’s position is that she has not filed the contract documents the Board needs to evaluate her request. A memo describing her efforts to obtain the documents the Board seeks and any argument [about] the documents she has already submitted to the Board should be adequate

Ms. Howard has filed no response.

In these circumstances, Ms. Howard has failed “to comply with orders” and to “respond to notices or correspondence.” 801 C.M.R. § 1.01(7)(g)(2). In addition, by submitting neither an

opposition to the board's dispositive motion nor any argumentation in support of her appeal, Ms. Howard has "indicate[d] an intention not to continue with the prosecution of [her] claim." *Id.* *See also Metro v. Newton Ret. Bd.*, No. CR-20-237, 2024 WL 5112217 (Contributory Ret. App. Bd. Nov. 18, 2024). Dismissal based on failure to prosecute is therefore appropriate. Adjudicative tribunals must focus their limited resources on the disputes that are actually being litigated. *See Bucchiere v. New England Tel. & Tel. Co.*, 396 Mass. 639, 641 (1986).

In view of the foregoing, it is hereby ORDERED that the motion to dismiss is ALLOWED and the appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate