

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Brendan Keefe,**  
Petitioner,

Docket No.: CR-24-0282

v.

**State Board of Retirement,**  
Respondent.

**Appearances:**

For Petitioner: Brendan Keefe

For Respondent: Alison K. Eggers, Esq.

**Administrative Magistrate:**

Judi Goldberg, Esq.

**SUMMARY OF DECISION**

The petitioner is ineligible to purchase contract service under G.L. c. 32, § 4(1)(s), for the time he worked as an employee of Spectrum Health Systems, Inc., a vendor for the Department of Corrections. He was not a state employee nor was he a contract employee. Rather, he worked for a nonprofit corporate vendor that was not an instrumentality of the Commonwealth. *See* 941 CMR 2.09(3)(c). Accordingly, the Board's denial of Mr. Keefe's application is affirmed.

**DECISION**

Petitioner Brendan Keefe timely appealed, under G.L. c. 32, § 16(4), the decision of the State Board of Retirement to deny his application to purchase contract service from May 28, 2001, to May 28, 2005, because as a vendor's employee, he was not a "contract employee" for purposes of Chapter 32. On August 30, 2024, Mr. Keefe submitted a memorandum in support of his appeal to the Division of Administrative Law Appeals (DALA). On November 5, 2024, the Board filed a motion to dismiss, which Mr. Keefe opposed on November 18, 2024, and DALA denied on March 24, 2025. On April 16, 2025, DALA ordered the Board to file a memorandum in response

to Mr. Keefe's August 2024 filing. The order also indicated that this case would be decided based on the parties' written submissions pursuant to 801 CMR 1.01(10)(b). The parties submitted a total of 14 exhibits, which I accept and make part of the record.

**Findings of Fact**

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

1. The Commonwealth's Department of Correction has had a contractual relationship with Spectrum Health Systems, Inc. (Spectrum), a nonprofit corporation, for many years. (Exhibits 10, 12, 13.)

2. Mr. Keefe worked for Spectrum from September 1999 through September 2012. (Exhibits 3, 5.)

3. Spectrum has provided an array of addiction treatment and recidivism reduction programming for people in the Massachusetts criminal justice system. (Exhibit 14.)

4. Mr. Keefe first worked in a Spectrum residential treatment program from 1999 to 2001. (Exhibit 3.)

5. Starting in 2001, Mr. Keefe worked for Spectrum at prisons around Massachusetts. He introduced programs and treatment modalities to help incarcerated people manage their behavior and prepare for successful reentry into society. (Exhibit 3.)

6. He created new programs at MCI Cedar Junction (Cedar Junction) in the department disciplinary unit (DDU). In that role, he provided behavioral interventions for the most difficult and violent prisoners. (Exhibit 3; Petitioner's Memorandum.)

7. Mr. Keefe contributed to Social Security in 2002 through 2005. His W-2 tax forms from those years list Spectrum Health Systems, Inc. as his employer. (Exhibit 2.)

8. Mr. Keefe began working as a full-time employee of the Department of Corrections (DOC) in September 2012. (Exhibit 5.)

9. Mr. Keefe has continued to work for the DOC. As of August 2025, he was the director of the secure adjustment unit at the Souza Baranowski Correctional Center (SBCC). (Petitioner's August 5, 2025, letter.)

10. On September 16, 2022, Mr. Keefe applied to purchase contract service from May 28, 2001, to May 28, 2005. (Amended Exhibit 1.)

11. The Board denied his application on April 25, 2024, because he was not a "contract employee" of the Commonwealth, but rather was a vendor's employee. (Exhibit 7.)

12. Mr. Keefe timely appealed from that denial on April 30, 2024. (Exhibit 8.)

### **Analysis**

As the petitioner, Mr. Keefe has the burden of proving by a preponderance of the evidence, or that it is more likely than not, that the facts support his entitlement to purchase contract service under Chapter 32.

When a member retires from public service he may be entitled to a superannuation retirement allowance based in part on his years of creditable services. G.L. c. 32, § 5(2)(a). Section 1 of Chapter 32 defines "creditable service" as "all membership service, prior service and other service for which credit is allowable to any member under the provisions of sections one to twenty-eight inclusive." *Id.* § 1. One form of "other service" that a member may purchase under

certain circumstances is “contract service” with the Commonwealth. Section 4(1)(s) of Chapter 32 states, with emphasis added:

Any member in service of the state employees' retirement system who, immediately preceding the establishment of membership in that system . . . was compensated for service to the commonwealth **as a contract employee for any department, agency, board or commission of the commonwealth** may establish as creditable service up to 4 years of that service if the member has 10 years of creditable service with the state employees' retirement system[.]

*Id.* § 4(1)(s).

An employee may not, however, purchase service credit based on employment for a third-party vendor, even if the employee performed work for the Commonwealth. *See, e.g., Hogan v. State Bd. of Ret.*, CR-16-0243 (Contributory Ret. App. Bd. June 1, 2021) (denying purchase of service credit based on work for vendor Franklin/Hampshire County Community Health Center); *Grant v. State Bd. of Ret.*, CR-22-0542 (Div. of Admin. Law App. Dec. 22, 2023) (denying purchase of service credit based on work for vendor PeopleServe, Inc.).

The Board’s regulations provide additional context:

The contract service being purchased must have been service as a "contract employee" of the Commonwealth. Except only as otherwise set forth in this subsection members who were employees of a vendor or contractor, which was selected and contracted to provide services to the Commonwealth, are specifically excluded from purchasing contract service as creditable service. The Board may consider as eligible contract service such service provided through a vendor established and operated by, or that functions as an instrumentality of, the Commonwealth or a Commonwealth agency.

941 CMR 2.09(3)(c).<sup>1</sup> Thus, although there is a general prohibition on the purchase of service credit based on work for a vendor with which the Commonwealth contracted to provide services,

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<sup>1</sup> The Board amended this version of the regulation effective March 28, 2022. The amended regulation applies to Mr. Keefe’s September 16, 2022, application. *See Garg v. State Bd. of Ret.*, CR-22-0584 (Div. of Admin. Law App. Sept. 20, 2024) (regulations promulgated before

it includes two exceptions under which the Board may consider such work as “contract service.” Specifically, the member may purchase service credit if the Commonwealth established or operated the member’s former employer, or if that employer functioned as an instrumentality of the Commonwealth or one of its agencies.

Here, the DOC contracted with Spectrum, a nonprofit corporation, to provide services within the correction system. The Commonwealth did not establish or operate Spectrum. As a result, Mr. Keefe cannot purchase his service under the first part of the Board’s exception.

The second part of the Board’s exception allows for purchase of service if an employer was an “instrumentality of the Commonwealth.” Chapter 32 does not define what this means. Courts considering whether an entity is a state “instrumentality” have looked to the following factors: whether a statute, regulation, or executive order formed the entity; whether the entity performs “some essentially governmental function[,]” whether the entity “receives or expends public funds[,]” the extent to which the state “controls or supervises the entity[,]” and whether the state is the entity’s essential “owner[.]” *Massachusetts Bay Transp. Auth. Ret. Bd. v. State Ethics Comm’n*, 414 Mass 582, 589-91 (1993). *See also McMann v. State Ethics Comm’n*, 32 Mass. App. Ct. 421, 425 (1992) (analyzing “instrumentality” in context of regional school district); *Hogan v. State Bd. of Ret.*, CR-16-243 (Contributory Ret. App. Bd. June 1, 2021) (concluding that for purposes of Chapter 32 analysis “it is of no consequence that . . . employees . . . performed work that DMH might have performed”).

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an application’s filing date govern that application (citing *Kalu v. Boston Ret. Bd.*, 90 Mass. App. Ct. 501, 505 n.8 (2016))).

In this case, the Legislature did not create Spectrum or place it within state government. There is no evidence that the Commonwealth controlled or supervised Spectrum or that it was Spectrum's "essential owner." Spectrum was a nonprofit corporate vendor with whom the DOC contracted to provide services. It was not an instrumentality of the Commonwealth. Thus, Mr. Keefe cannot purchase service credits under the second part of the Board's exception.

The Board does not dispute that the work Mr. Keefe did as a Spectrum employee was important, challenging, and at times dangerous. However, a preponderance of the evidence supports the conclusion that Mr. Keefe was an employee of a vendor from May 28, 2001, to May 28, 2005. Based on the above analysis, he cannot purchase service credit based on his time as a Spectrum employee. The decision of the Board is hereby **affirmed**.

Dated: December 12, 2025

/s/ Judi Goldberg

Judi Goldberg

Administrative Magistrate

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