

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Lynne Kellner,
Petitioner

v.

Docket No. CR-24-0276

State Board of Retirement,
Respondent

Appearance for Petitioner:

Lynne Kellner, *pro se*

Appearance for Respondent:

Matthew Szafranski, Esq.

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The Petitioner appeals a decision by the State Board of Retirement that she is precluded from purchasing prior contract service on the ground that she was no longer a member in service when she made her purchase request. The decision is reversed. The Petitioner mailed her request to purchase the prior contract service while she was still a member in service.

DECISION

The Petitioner, Lynne Kellner, appeals a decision by the State Board of Retirement that she is precluded from purchasing her prior contract service on the ground that she did not request to purchase the service while she was still a member in service. I held an in-person hearing on July 22, 2025. Ms. Kellner and her husband,

Thomas Kellner, testified on her behalf. I admitted Exhibits A-J into evidence. The parties filed post-hearing briefs on or about August 4, 2025, whereupon the record was closed.¹

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Prior to her retirement for superannuation on May 31, 2021, Ms. Kellner was a professor at Fitchburg State University. (L. Kellner Test.; Exhibit J).
2. No later than 2020, Ms. Kellner decided that she would retire in May 2021. (L. Kellner Test.).
3. In 2020, she started to obtain information on the retirement process. (L. Kellner Test.).
4. At some point, she spoke with someone at the Board – she cannot recall the person with whom she spoke – who told her that she should not send in her materials via certified mail. The person explained to her that, as a result of the COVID-19 pandemic, there was some uncertainty about whether there

¹ Towards the end of the hearing, I realized that I had neglected to begin recording the hearing. I asked the parties if they wished to repeat their examinations or otherwise memorialize some or all of the testimony. The Board elected to re-ask some questions to preserve the testimony. That testimony was recorded. Ms. Kellner did not elect to ask any further questions or re-testify. In this decision, I rely on the exhibits, the parties' recitations of the evidence in their post-hearing briefs, as well as my own notes and recollection of the testimony. I note that the parties' recollections of the testimony, insofar as they are reflected in their respective post-hearing briefs, are not materially inconsistent with one another or with my own recollections.

would be anyone in the office to receive certified mail when she mailed her retirement documents. (Kellner Test.).²

5. Ms. Kellner wished to purchase prior contract service with Mount Wachusett Community College (“MWCC”). In July 2020, Ms. Kellner completed Section A of the Contract Service Buyback Form and sent Section B (which must be completed by the former employer) to MWCC. MWCC completed Section B and returned it to Ms. Kellner in October 2020, shortly after she had returned from a conference. (L. Kellner Test.; Exhibit A).
6. Ms. Kellner mailed her buyback application to the Board shortly thereafter, in October 2020. Although it was her general practice to send important documents via certified mail, she did not mail her buyback application via certified mail because she had been advised not to do so. (L. Kellner Test.; Exhibit A).
7. Ms. Kellner did not immediately follow up on her request because she understood that it was taking 12-18 months to process buyback requests. (L. Kellner Test.).
8. In March 2021, Ms. Kellner mailed her retirement application to the Board. (L. Kellner Test.; Exhibit G). Her retirement application contains a handwritten notation that reads: “Worked as Adjunct at MWCC – Buyback

² According to an internal Board e-mail, Board staff remained onsite to process incoming mail (Exhibit H), but this has no bearing on whether, when Ms. Kellner called, the person with whom she spoke voiced uncertainty at that time about in-person staffing moving forward.

Request Previously Sent to Retirement Bd.” In response to a question on the application about whether she had “a buyback in progress,” Ms. Kellner checked the box for “yes.” (Exhibit G).

9. As with her buyback application, Ms. Kellner did not mail her retirement application via certified mail. (L. Kellner Test.).
10. On May 31, 2021, Ms. Kellner retired for superannuation. (L. Kellner Test.; Exhibit J).
11. In the fall of 2022, Ms. Kellner became concerned that she had not heard anything from the Board about her buyback request. She called the Board three times to follow up. (L. Kellner Test.).
12. Ms. Kellner did not reach anyone on the telephone, so she e-mailed the Board on November 7, 2022. Board staff responded, and Ms. Kellner eventually spoke with a staff member from the Board’s buyback unit in early December. The staff member told her that the Board had no record of her buyback application. He advised her to re-send her application, along with a cover letter explaining the situation. (L. Kellner Test.; Exhibit B).
13. On December 12, 2022. Ms. Kellner mailed another copy of her buyback application, as well as an explanatory cover letter. (L. Kellner Test.; Exhibit A; Exhibit C).
14. In a letter dated April 22, 2024, the Board denied Ms. Kellner’s buyback request on the ground that, when it received her request, she was no longer a “member in service” as that term is defined in G.L. c. 32, § 3(1)(i). (Exhibit

D).

15. Ms. Kellner timely appealed the Board's decision. (Exhibit E).

CONCLUSION AND ORDER

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 [s]he is still working for a governmental entity that participates in a retirement system.”

Zavaglia v. Gloucester Ret. Bd., CR-09-459, 2015 WL 14085596, at *1 (Contrib. Ret. App. Bd. April 13, 2015). The Board acknowledged at the hearing that Ms. Kellner would have satisfied this requirement if she had mailed her request while still an active member (that is, before her retirement on May 31, 2021). Accordingly, resolution of this appeal turns on whether Ms. Kellner mailed her request to purchase the prior service in October 2020, as she claims.

Ms. Kellner, as the petitioner, bears the burden of proof. *Pomeroy v. Plymouth Ret. Bd.*, CR-15-258, 2019 WL 13536568, at *5 (Contrib. Ret. App. Bd. May 20, 2019) (citations omitted).

Ms. Kellner has met her burden of proving by a preponderance of the evidence that she mailed her buyback application in October 2020. Based on the record before me, I do not consider it probable that Ms. Kellner would have filled out Section A of the application, asked MWCC to complete Section B, and then failed to mail the completed application when she received the completed Section B from MWCC. Moreover, in her retirement application, she expressly references her buyback request, and she later reached out to the Board on multiple occasions to inquire into the status of her buyback

request, neither of which she would have done had she not sent in her application. In brief, I find that Ms. Kellner did, in fact, mail her application in October 2020.

The Board's assertion to the contrary relies heavily on the presumed regularity of the US mails. The Board correctly observes that, in "Massachusetts, the regular course of the mails is presumed." *Drury v. Franklin Reg'l Ret. Bd.*, CR-09-543 (Div. Admin. Law App. Dec. 20, 2013), citing *Holiver v. Dept. of Public Works*, 333 Mass. 18, 21 (1955). The Board argues that if Ms. Kellner had mailed the application, the Board would have received the application in the ordinary course. Therefore, the Board asserts, because it never received the application, it may be presumed that Ms. Kellner did not mail it. There are at least two difficulties with this argument.

First, the Board has not established that it did not, in fact, receive the application. Board staff told Ms. Kellner that there was no *record* that it had received the application, but that is not quite the same as actually establishing that it had not been received. The Board has provided no evidence regarding its processes for receiving, logging, and cataloging incoming mail, for example, such that the absence of receipt may be reasonably inferred from an absence of a record of receipt. Nor has the Board provided any support for the proposition that I may simply presume the reliability of its processes as a matter of law.

The second, and more serious, difficulty with the Board's argument is that once Ms. Kellner introduced evidence that she did, in fact, mail the application, the presumed regularity of the US mails is not entitled to any special evidentiary weight.

Commonwealth v. Chappee, 397 Mass. 508, 520 (1986); *Hobart-Farrell Plumbing &*

Heating Corp. v. Klayman, 302 Mass. 508, 509 (1939). It is not, as the Board appears to suggest, some sort of special evidentiary obstacle that may be overcome only by unusually robust evidence.

The Board also argues that the fact that Ms. Kellner mailed her retirement application via regular mail and it was processed without incident confirms the regularity of the postal system. Evidence that a piece of mail was successfully delivered in one instance is not compelling evidence that a different piece of mail on a different date would have been successfully delivered had it been mailed. In any case, it is far less compelling than the general presumption of the mail's regularity, which is based on the accumulated experience of countless mail deliveries, and which, for the reasons recited above, does not persuade me that Ms. Kellner failed to mail her buyback application.

The Board also observes that Ms. Kellner did not follow up on her buyback application prior to her retirement on May 31, 2021, after which time she would be ineligible to purchase the service. If Ms. Kellner had timely mailed her application, the Board suggests, she would have followed up with the Board before May 31, 2021, not the fall of 2022.

In making this argument, the Board analogizes this case to *Powers v. Massachusetts Teachers' Retirement System*, CR-10-287, (Div. Admin. Law App. March 13, 2015), which concerned whether the member had timely elected to pay for the purchase of prior service in a lump sum or via an installment agreement. The magistrate did not credit the member's assertion that she timely submitted her election because,

among other reasons, the member knew that she had to make a payment by a certain date and marked the deadline in her calendar but did not follow up with the Board when she did not receive the invoice required to make such payment prior to the deadline. *Id.* at *4.

In this case, by contrast, there is little evidence that Ms. Kellner fully appreciated the significance of the May 2021 deadline or tracked it. She perhaps concluded that because she had timely submitted her request, any processing delays on the Board's end were immaterial (which would be a reasonable conclusion in view of the Board's acknowledgment that the mailing of the buyback application prior to the deadline would suffice).

Although not argued by the Board, I note that Ms. Kellner and Mr. Kellner both testified that Ms. Kellner generally mailed important documents via certified mail. That being the case, it is perhaps surprising that she did not call the Board to confirm receipt soon after she mailed the application. She understood that the application would not be processed right away, but there is no reason why she could not have called to confirm that her application had at least been received. This seeming incongruity notwithstanding, I conclude that the evidence's preponderance establishes that Ms. Kellner timely mailed her buyback application.

For the foregoing reasons, the Board's decision is reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: September 19, 2025