

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Wayne Klug,
Petitioner

v.

Docket No.: CR-25-0392
Date Issued: April 24, 2026

State Board of Retirement,
Respondent

Appearance for Petitioner:

Quesiyah Ali, Esq.

Appearance for Respondent:

Yande Lombe, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The Petitioner is not entitled to purchase service credit for a ten-year period of part-time contract service because it preceded a 14-month period of membership service for which he took a refund of his retirement contributions. See G.L. c. 32, § 4(1)(s); 941 CMR 2.09(3)(e)(1), (2). Even if, as Petitioner alleges, the operative MSERS regulations are *ultra vires*, a duly promulgated regulation is presumed valid, has the force of law, and cannot be annulled by the Division of Administrative Law Appeals. *Berrios v. Dep't of Pub. Welfare*, 411 Mass. 587, 595 (1992) (citations omitted); *Massachusetts Tchrs' Ret. Sys. v. Contributory Ret. App. Bd.*, 466 Mass. 292, 297 (2013); *Pepin v. Div. of Fisheries & Wildlife*, 467 Mass. 210, 214 (2014).

DECISION

Petitioner Wayne Klug timely appeals, under G.L. c. 32, § 16(4), the State Board of Retirement's partial denial of his application to purchase contract service under G.L.

c. 32, § 4(1)(s). On June 26, 2025, DALA ordered the parties to file legal memoranda and exhibits in support of their positions, as the appeal appeared to be over a legal dispute that could be resolved on written submissions under 801 CMR 1.01(10)(c). Neither party objected. On August 29, 2025, Mr. Klug submitted his memorandum and 6 proposed exhibits. On October 7, 2025, the Board filed its memorandum and 6 additional proposed exhibits. I hereby enter the 12 proposed exhibits into evidence as marked. (Exs. 1-12.)

FINDINGS OF FACT

Based on the documents in evidence, I make the following findings of fact:

1. Wayne Klug has had a varied career in public service—sometimes working part-time and sometimes full-time, sometimes working as a contract employee and sometimes as a regular employee—but he has always worked in education in some capacity. (Ex. 3.)

2. Mr. Klug was employed as a part-time contract employee at the University of Massachusetts at Lowell (UMass Lowell) from October 1, 1982 through December 16, 1995, serving as a Visiting Adjunct Faculty Member. He continued to perform this work even when, from time to time, he had other full-time jobs. (Ex. 3.)

3. From roughly 1982 through 1986, while still working part-time at UMass Lowell, Mr. Klug also worked full-time for the Lincoln-Sudbury School District for 0.925 years and the Randolph Public Schools for 3.0 years. He received credit for this work from the Massachusetts Teachers' Retirement System (MTRS). He eventually took a

refund of those retirement contributions, thus terminating his MTRS membership. He later applied to buy back this service but did not complete the purchase. (Ex. 9.)

4. From February 24, 1992, through April 23, 1993, Mr. Klug was employed full-time as Executive Director of the Lowell Community/University Partnership (the Partnership) at UMass Lowell. For the first time, this job made him a member of the Massachusetts State Employees Retirement System (MSERS). In 1993, Mr. Klug took a refund of his retirement contributions from this work, thus terminating his MSERS membership. (Exs. 3, 7.)

5. On September 1, 1995, Mr. Klug began full-time as an assistant professor at Berkshire Community College. He was eventually promoted to professor. He continued working full-time there until September 1, 2024, when he retired. Because Mr. Klug became a full-time state employee again, he became a member of MSERS again in 1995 and maintained his membership until he retired. (Ex. 7.)

6. Several years before he retired, in 2017, Mr. Klug submitted two service credit purchase applications. First, under G.L. c. 32, § 3(8), he applied to buy back his prior full-time MTRS service and his UMass Lowell Partnership full-time service. (Ex. 3.)

7. Mr. Klug also applied to purchase his UMass Lowell part-time contract service under G.L. c. 32, § 4(1)(s). (Ex. 4.)

8. The Board did not respond to either of the two applications until after Mr. Klug retired. In April 2025, he followed up with MSERS about his then 8-year-old applications. His correspondence with MSERS was complicated slightly because he was

sensibly attempting to purchase the least expensive service in order to reach a total of 32 years of service credit. (Ex. 10.)

9. On April 17, 2025, MSERS issued a bill for 4 years, 11 months, 7 days of creditable service covering September 1, 1982 through June 30, 1983 (Lincoln-Sudbury School District); September 1, 1983 through June 30, 1986 (Randolph Public Schools); and from February 24, 1992 to April 23, 1993 (full-time with the Partnership). Because the service had occurred so long ago, the total buyback amount, which included actuarial interest, was \$78,423.19, and the deadline to confirm purchase was May 22, 2025. Mr. Klug ended up not purchasing this service. (Ex. 11.)

10. On June 5, 2025, MSERS issued another bill for 5 months, 0 days of service credit covering his UMass Lowell part-time contract service from April 25, 1993 through August 19, 1995. This covered the period between his UMass Lowell Partnership job and his full-time Berkshire Community College job. The total buyback amount was \$3,446.94, and the deadline to confirm purchase was December 2, 2025. He completed this purchase. (Exs. 2, 12.)

11. MSERS also informed Mr. Klug that it would *not* approve his request to purchase his contract service from January 1, 1982, through February 23, 1992, because it preceded a period of membership service—February 24, 1992, through April 23, 1993, at the Partnership—for which he had taken a refund of his retirement contributions. Mr. Klug timely appealed the Board’s decision. (Exs. 2, 5.)

CONCLUSION AND ORDER

When a member retires from public service, he may be entitled to a superannuation retirement allowance that is based in part on his years of creditable service. G.L. c. 32, § 5(2)(a). “Creditable service” is defined 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.” G.L. c. 32, § 1.

One form of “other service” that a member may purchase, under certain limited circumstances, is prior contract service to the Commonwealth. G.L. c. 32, § 4(1)(s) provides, in relevant part:

Any member in service of the state employees’ retirement system who, *immediately preceding* the establishment of membership in that system or re-entry into active service in that system, was compensated for service to the commonwealth as a contract employee . . . may establish as creditable service up to 4 years of that service

(Emphasis added.) “Immediately preceding” has been interpreted by the Board to mean that the contract service occurred within 180 days of the establishment of membership.

941 CMR 2.09(3)(e)(1). An additional, related regulation, 941 CMR 2.09(3)(e)(2), further provides:

A member who refunds his or her retirement contributions terminates membership in the MSERS. If the individual later returns to service for the Commonwealth, he or she is considered a new member for the purposes of M.G.L. c. 32. *Thus, a member of the MSERS may not purchase contract service if such contract service preceded a period of membership service for which the member took a refund.*

(Emphasis added.)

Here, MSERS allowed Mr. Klug to purchase his contract service for the period April 25, 1993 through August 19, 1995 because it occurred within 180 days of

establishing membership again in September 1995, and it otherwise met all the requirements in G.L. c. 32, § 4(1)(s); 941 CMR 2.09(3)(e)(1).

However, the Board correctly denied Mr. Klug's application to purchase his January 1, 1982, through February 23, 1992, part-time contract service because, in 1993, he had withdrawn his February 24, 1992, through April 23, 1993, MSERS retirement contributions, thus terminating his membership in MSERS. This means that the relevant contract service "preceded a period of membership service for which [he] took a refund," and therefore cannot be purchased. 941 CMR 2.09(3)(e)(2).

Mr. Klug contends that he is nonetheless entitled to purchase his earlier contract service because the regulation that bars the purchase is *ultra vires*. Essentially, he argues that, because G.L. c. 32, § 4(1)(s) does not mention anything about periods preceding a period of membership service for which the member took a refund, the Board exceeded its authority by promulgating a regulation that addresses that situation.

Mr. Klug fails to recognize, however, that a duly promulgated regulation is presumed valid. *Berrios v. Dep't of Pub. Welfare*, 411 Mass. 587, 595 (1992) (citations omitted). It has the force of law and cannot be annulled by an administrative tribunal. *Massachusetts Tchrs' Ret. Sys. v. Contributory Ret. App. Bd.*, 466 Mass. 292, 297 (2013); *Pepin v. Div. of Fisheries & Wildlife*, 467 Mass. 210, 214 (2014). As such, an agency is bound to follow its own regulations. *Royce v. Commissioner of Corr.*, 390 Mass. 425, 427 (1983). Mr. Klug does not allege any defect in the regulation's promulgation; therefore, I am bound to follow it.

Moreover, it is not obvious what the Legislature meant when it required that contract service must “immediately precede” membership service in order to qualify for purchase. G.L. c. 32, § 4(1)(s). MSERS has reasonably interpreted that phrase to mean within 180 days, recognizing that periods of red tape that sometimes occur between otherwise contiguous periods of employment can delay the start of the new employment. See 941 CMR 2.09(3)(e)(1). It was likewise reasonable for the Board to address the complicated issue of what happens when a member establishes membership, terminates it by taking a refund, and then re-establishes membership. See also G.L. c. 32, § 3(8). Taking a refund almost always leaves a gap of more than 180 days between the periods of service preceding and following the refunded period. Once the contributions are refunded to the member, thereby erasing that period of service, the earlier period of contract service is no longer within 180 days of the period that follows the refunded period. 941 CMR 2.09(3)(e)(2) merely spells out a bright-line rule to address that not entirely uncommon situation.

For the above-stated reasons, Mr. Klug is not entitled to purchase service credit for his 1982-1992 contract service. The Board’s decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: April 24, 2026