COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

JESSICA LANGSAM *Petitioner*	:	Docket No. CR-22-0437
	:	Date: March 14, 2025
v.	:	
STATE RETIREMENT BOARD *Respondent*	:	

Appearances:
For Petitioner: Kavita Goyal, *Esq.*
Monica Morgan, *Esq.*
For Respondent: Yande Lambe, *Esq.*

Administrative Magistrate:
Eric Tennen

SUMMARY OF DECISION

The Petitioner is an assistant district attorney in Middlesex. From 2021-2023, she worked in a unique overseas position as a Resident Legal Advisor, essentially "on loan" to the Department of Justice. Neither answering e-mails (from her assistant district attorney account), nor the experience she gained from the placement, are considered "service" to the district attorney's office. Moreover, because she did that infrequently, and only when she first arrived overseas, she was not "regularly and permanently employed in such service." She was thus not an "employee" entitled to creditable service during this placement.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the State Board of Retirement's ("Board") decision that she is not entitled to creditable service while she worked overseas from 2021-2023. I conducted an in-person hearing on October 30, 2024. The Petitioner testified, as did First Assistant District Attorney Stephen Loughlin and Chief Financial Officer, Regina Scalley. I entered exhibits R1-R3 and P1-P7 into evidence. Respondent submitted Exhibit

P8 after the hearing, which I now enter into evidence. Both parties submitted post-hearing briefs on January 31, 2025.[1]

FINDINGS OF FACT

1. The Petitioner began working an assistant district attorney for the Middlesex District Attorney's Office ("Middlesex DA") in 2001. (Langsam testimony; ex. R1.)
2. In 2021, the Petitioner was presented with an exciting opportunity: to work an overseas detail as a Resident Legal Advisor in the Department of Justice's office of Overseas Prosecutorial Development, Assistance, and Training ("Overseas office"). The location: the United States Embassy in Niger. (Langsam testimony; ex. P1.)
3. For this to occur, the Middlesex DA and Department of Justice had to enter into a Memorandum of Understanding. The Memo of Understanding was fairly detailed. It outlined that the assignment was to last 14 months and the Petitioner would "retain all benefits of [her] current position with Middlesex County." (Ex. P1.)
4. The Overseas office would pay for the Petitioner's salary and benefits. The Middlesex DA would continue to process required time and attendance information. But during the assignment, the Petitioner was subject to the Overseas office's hours of work and other policies applicable to the Overseas office employees. (Ex. P1.)
5. Although this suggests the Overseas office would pay the Petitioner directly, it did not. Instead, the Middlesex DA continued to pay the Petitioner directly, just as it did while she was working in the United States. She continued to receive bi-weekly payments, and

[1] The Petitioner subsequently moved for leave to file a reply brief which the Respondent opposed. I now allow the Petitioner's motion to file the pleadings but not based on its characterizations of the Board's closing brief. Rather, I take her reply, along with the Board's opposition, as further legal arguments that I consider in my decision.

the same vacation and sick leave benefits. The only real difference was that she submitted her time to someone at the Overseas office, who forwarded that to someone at the Middlesex DA. (Langsam testimony.)

6. Pursuant to the Memo of understanding, the Overseas office would "reimburse" the Middlesex DA for the Petitioner's benefits and salaries through a reimbursement agreement. the Middlesex DA then had full authority to use that money to "fund the district priorities." (Ex. P1.)

7. Regina Scalley is the Chief Financial Officer for the Middlesex DA. She explained that the Middlesex DA had to create an expendable trust to receive these funds from the Department of Justice. But these were not the funds used to pay the Petitioner, especially since the Department of Justice paid quarterly and not until months after the Middlesex DA had already paid the Petitioner. The expendable trust was then more like a discretionary fund that the Middlesex DA used for things other than the Petitioner's salary and benefits. (Scalley testimony.)

8. The Petitioner's job had several goals. She would work with various actors to help "Niger's criminal justice sector['s] capacity to combat terrorism." She was to "work on promoting interagency coordination and communication among those institutions participating in the rule of law development efforts" to "strengthen the bilateral relationship between the United States and Niger on criminal justice matters and assist Niger on efforts regarding its compliance with regional international anti-crime norms and obligations." (Ex. P1.)

9. The hope, from the Middlesex DA's perspective, was that the assignment would

"provide [the Petitioner] with unique experience in representing the Department of Justice by working with justice sector officials on legislative, procedural, and policy reform[.]" (Ex. P1.)

10. The Petitioner understood she was "on loan" to the Department of Justice. (Langsam testimony.)

11. The Middlesex DA agreed to let the Petitioner go on this assignment hoping it would benefit from her experience when she returned. However, when pressed at the hearing, first district attorney Loughlin could not provide any concrete examples of how the Petitioner's work in Niger benefited the office now that she returned. At most, he offered that if there were a terrorism event, he is sure she could help. (Loughlin testimony.)

12. Even the Petitioner could not say what specific benefits her placement provided the Middlesex DA other than she returned "with the knowledge and experience [she] had gained from having represented the Department of Justice at a US embassy abroad[.]" She then gave one example where she was able to help communications in a case involving a crime against a French citizen. (Langsam testimony.)

13. The overseas detail was supposed to start in January 2021. However, it was delayed because of COVID-19 issues until April 2021 as the Petitioner awaited vaccination and final approval to travel. (Langsam testimony.)

14. Once there, her contract was extended twice, from March 2022 through March 2023 and from March 2023 through July 2023. (Ex. P1.)

15. In Niger, the Petitioner performed all the tasks envisioned by the Memo of

understanding. She worked in the embassy, serving the Overseas office and the Department of Justice. She had a regular schedule but was essentially on duty "24/7." (Langsam testimony.)

16. According to the Memo of understanding, while on assignment, the Petitioner "shall have no obligation or duty to Middlesex County during the term and service during the term shall be entirely to the benefit of the [Overseas office]." (Ex. P1.)

17. The Petitioner understood this to mean she could not perform any work for the Middlesex DA during her detail. But given the large number of cases for which she had been responsible, it was hard to just "switch off." (Langsam testimony.)

18. The Petitioner's Middlesex DA e-mail remained active, and she checked it from time to time: at first maybe once a week, by 2022, maybe once a month, and "less so" by 2023. (Langsam Testimony; ex. P8.)

19. She was most active in January 2021. For example, she responded to a series of e-mails helping the office file an appellate brief. Almost half the e-mails submitted as part of Exhibit P8 occurred between January and April 2021, before she left overseas. (Ex. P8.)

20. The Petitioner received creditable service for working during this time. The Board noted she only became an "inactive member" in April 2021, when she finally made it to Africa. (Ex. R1.)

21. Looking at her e-mails from April 2021 and on, they were infrequent and mostly not about her work at the Middlesex DA. Many were about logistical issues, such as health insurance or salary. Others were thanking people for following up on various cases. There are some e-mails exchanging documents about a case or giving someone some

instructions. But those are few and far between and anything but "regular."[2] (Ex. P8.)

22. The last e-mail that could even be interpreted as work-related was sent in October 2021. After that, the e-mails for the next 19 months (from November 2021 through July 2023) are almost exclusively about logistics related to the Petitioner's service in Africa and her ultimate return to the United States. (Ex. P8.)

23. In 2022, the Petitioner contacted the Board about a question regarding her benefits. That question, though unrelated to this appeal, was the first time the Board learned about her assignment to the Department of Justice. It caused the Board to take a closer look at her time abroad. It then notified the Petitioner that, after reviewing her case, it found she should have been considered an "inactive member" since April 2021. (Ex. R1.)

DISCUSSION

For purposes of the retirement system, an "employee" is, among other things, someone whose regular compensation is paid by any political subdivision of the commonwealth and "who is engaged in duties which require that [their] time be devoted to the service of . . . such governmental unit in each year during the ordinary working hours of regular and permanent employees, and who is regularly and permanently employed in such service[.]" G.L. c. 32, § 1.

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[2] On this record, it is hard to say whether the Petitioner was working in her capacity as an assistant district attorney or just being a thoughtful colleague. For example, there is one e-mail exchange in October 2021 in which an attorney is looking for assistance preparing for an appeal; she asked for people to help her "moot" the case. (Ex. P8, pgs. 255.) The Petitioner responded that she was familiar with the case and would "try" to join the moot. *Id*. Lawyers often help colleagues "moot" a case, sometimes as a favor and sometimes as part of their job. It is not clear that the Petitioner even ended up helping her colleague in this case. But if she did, it is also not clear whether that was as a favor to a colleague or a work obligation. The evidence is equivocal.

In any event, even if I interpret this exchange in favor of the Petitioner, it is still one of a handful of isolated incidents that collectively do not amount to "regular" service, as I explain below.

The parties first dispute whether the Petitioner was paid by a political subdivision of the commonwealth, i.e. the Middlesex DA, during her overseas detail. The evidence confirms that she was. While the Memo of understanding made it appear as if the Overseas office was going to pay the Petitioner directly, that ultimately was not the case: the Middlesex DA continued to pay her salary out of its budget; there was never any interruption to her pay; and she continued to receive the same benefits throughout, e.g. accruing annual and sick leave. The Middlesex DA was reimbursed by the Department of Justice and had to create an expendable trust account to accept that money. But that money was not used to pay the Petitioner. Indeed, it could not have been since the Middlesex DA had to first pay the Petitioner and was only reimbursed months later. Moreover, Ms. Scalley explained that the money in the trust was more like a discretionary fund and was not spent on things related to the Petitioner's payroll.

However, the problem for the Petitioner is that she does not meet the rest of the definition of an employee. The Board argues that the Petitioner was not providing "service" to the commonwealth, and I agree.[3] The Memo of understanding did not contemplate the Petitioner would be working for the Middlesex DA while abroad and the Petitioner herself understood she was "on loan." The Petitioner counters that she provided "service" because what she did in Niger ultimately benefited the Middlesex DA. But neither the Petitioner nor her witnesses could describe anything she did while abroad that provided some concrete benefit the Middlesex DA. Nor have I found any prior decision, or anything in chapter 32, that equates service with such indirect, unmeasurable benefits.

[3] Despite the Petitioner's claim, I do not read the Board's closing memorandum as conceding this point.

The Petitioner's other argument is that she provided "service" when she answered her e-mails. There is no concrete definition of "service," but there are some guideposts. "Service" cannot mean volunteer work. *See e.g. Dubois v. MTRS*, CR-24-0033 (Div. Admin. Law App. Jan. 10, 2025) (unpaid volunteer was not an "employee"). And it does not encompass the duties of someone, not actively working for an employer, but obligated to "cooperate reasonably" with "litigation concerning events that occurred during [their] employment." *Dodge v. Montague Ret. Bd., et al.*, CR-18-288 (Div. Admin. Law App. Dec. 7, 2018). To be sure, the most generous interpretation of what the Petitioner did when she responded to e-mails was that she was working for the Middlesex DA. But the better and more fitting interpretation is that she was volunteering her time to follow through on her prior cases because she cared about them and her co-workers. She did what many people do, especially lawyers, when they transition to a new job: she helped make sure someone could pick up where she left off with her caseload. This is the better and more fitting interpretation because at the time she was doing this, she was obligated to work for the Overseas office and was not supposed to be working for the Middlesex DA. In fact, she knew she could not perform any work for the Middlesex DA, but had a hard time "switching off." Also, she was not paid to perform these tasks for the Middlesex DA. She was paid her normal salary, whether or not she answered these e-mails, and her salary did not change based on the amount of time she spent e-mailing. Thus, I do not find that she provided "service" to the Middlesex DA when she responded to some work e-mails.

And even if I did, the Petitioner runs into another obstacle. Not only must employees provide service, they must also be "regularly and permanently employed in such service." There is no reasonable interpretation of the facts that shows the Petitioner was "regularly and permanently" employed in the service of the Middlesex DA while she was abroad. "The term

'regularly employed' according to its usual meaning refers to continuous employment as distinguished from sporadic, intermittent, or temporary employment." *Retirement Bd. of Concord v. Colleran*, 34 Mass. App. Ct. 486, 488-489 (1993), *citing Burnside v. Bristol County Bd. of Retirement*, 352 Mass. 481, 482-484 (1967) (deputy sheriff paid on a per diem basis to attend court sessions was not "regularly employed"); *De Weerdt v. City of Springfield*, 295 Mass. 523, 526 (1936) ("The words 'regularly employed' as thus used mean something of permanence in the employment, as distinguished from that which is occasional or temporary."). Given such a broad definition, the parties differ in how it applies to the specific facts of this case.

For example, the Petitioner cites a series of decisions that speak to "regular employment." *Duprey v. State Bd. of Ret.*, CR-21-0209, 2024 WL 664419 (Div. Admin. Law App. Feb. 9, 2024); *Gorski v. MTRS*, CR-18-544, 2022 WL 16921432 (Div. Admin. Law. App. Feb. 3, 2022); *Callahan v. Revere Ret. Bd.*, CR-12-523, 2017 WL 5195186 (Div. Admin. Law App. Aug. 25, 2017). But it is hard to draw a straight line from any of those decisions to this case. Here, the Petitioner was "on loan" to the Overseas office, where she worked full-time in service to the Department of Justice, and only occasionally did anything resembling "service" for the Middlesex DA. In most of the other cases, the Petitioners all worked for the same employer, just in a different capacity. *See e.g. Callahan* (Petitioner worked as a part-time grant administrator for the Revere Police before being hired full-time to the same position).

The closest analogy is *Gorski*. There, the Petitioner was employed as town counsel. He had no established regular hours, he worked part-time, he did not have an office, he submitted invoices for his work as opposed to receiving a regular paycheck, he did not accrue benefits, e.g. vacation time, and he maintained a private practice as a lawyer. DALA found he met the definition of "employee" because he was "regularly employed." *Gorski, supra* (denying his

application to buy his prior service on other grounds). Yet, the Contributory Retirement Appeal Board ("CRAB") has previously held that someone employed as town counsel in a similar arrangement was not "regularly employed":

> Mr. Sullivan was not "regularly employed" as an "employee" of the Town. He rendered professional services on an hourly basis as a licensed lawyer. His invoices consistently identified his services as "professional" services, and not employee services. He maintained his private practice and could perform the services on his own schedule and as he saw fit. The hours varied from month-to-month. While he was given assignments by Town officials, his work as a lawyer was not supervised by any other Town lawyer. While he received compensation for his services, the compensation was not regular and recurrent or a fixed periodic amount, but rather depended on the number of hours he worked. At no time did he contribute to the system through annuity savings deductions for the service now claimed or otherwise demonstrate that he had any expectation that his professional services would entitle him to retirement benefits.

Sullivan v. Easthampton Ret. Bd, et al., CR-04-10, at *4 (Contributory Ret. App. Bd. Mar. 6, 2006). Thus, to the extent the analogy to town counsel is apt, *Sullivan*, not *Gorski*, controls. *Fahey v. Boston Ret. Bd.*, CR-15-630 (Div. Admin. Law App., Nov. 2, 2016) ("DALA is bound by CRAB precedent until it is reversed by CRAB itself or the Court.").

Turning to this case, the Petitioner spent considerably less time doing things for the Middlesex DA than either Sullivan or Gorski did for their towns. Indeed, when could she find the time since, starting in April 2021, she was employed in the service of the Overseas office, for which she worked full-time (and was on duty 24/7). In any event, even if every e-mail the Petitioner sent was considered "service", it was infrequent and temporary. The bulk of her work-related e-mails with the Middlesex DA were sent between January and April 2021, before she left and for which she received creditable service anyway. Of the remaining e-mails, only some were work-related, and they comprise a miniscule fraction of her time while in Niger. Finally, there are no work-related e-mails after October 2021, although she remained abroad for another 19 months. The Petitioner was not thus "regularly and permanently employed" in service to the

Middlesex DA by answering a handful of e-mails during the first few months as a Resident Legal Advisor.

CONCLUSION

Although the Petitioner was paid by the Middlesex DA while she worked overseas, she did not provide service to the Middlesex DA, and she was not "regularly and permanently employed." The Board's decision is therefore **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate