

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Michael Leary,
Petitioner

v.

State Board of Retirement,
Respondent

Division of Administrative Law Appeals
14 Summer Street, 14th Floor
Malden, MA 02148
(781) 397-4700
Fax: (781) 397-4720
www.mass.gov/dala
Docket No: CR-25-0253

Date: 5/16/2025

DISMISSAL

Petitioner is seeking to purchase prior seasonal, non-membership service with the Department of Conservation and Recreation from June 15, 1993 to August 31, 1993.

He submitted his purchase request on June 7, 2024. Board records indicate that he last worked for the Commonwealth on July 1, 2023. That means that when he applied he was no longer a “member in service,” which is required to purchase prior service. G.L. c. 32, § 3(1)(ii); *Zavaglia v. Gloucester Retirement Bd.*, CR-09-459, at *5 (Div. Admin. Law. App. Jan. 10, 2014), *aff’d* (Contributory Ret. App. Bd. July 3, 2014).

Consequently, on May 2, 2025, I ordered Petitioner to provide evidence that he was a member in service when he applied to purchase his DCR service. I informed Petitioner that failure to provide this evidence meant that the appeal would be dismissed.

The Petitioner submitted his response to the order on May 12, 2025. He stated that he had begun discussions with the Board regarding the purchase of his service before he left his position. He also emphasized that his efforts are sincere and have been made in good faith. I have no reason to doubt these representations; however, neither makes a difference here because neither assertion changes the fact that he was not a member in service when he filed the application to purchase the service. *Zavaglia* makes clear that the salient dates are the application date and the date the member leaves active service. Where the law is so clear, no exceptions are permitted.

Accordingly, this matter is hereby **DISMISSED**.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

Notice sent to: Michael Leary
Jennifer Hunt, Esq.