

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Lisa Mendel,
Petitioner,

No. CR-23-0584

Dated: May 23, 2025

v.

**Berkshire County Retirement Board and
Massachusetts Teachers' Retirement
System,**
Respondents.

Appearances:

For Petitioner: Ashley Walter, Esq.

For Berkshire County Retirement Board: Gerald A. McDonough, Esq.

For Massachusetts Teachers' Retirement System: Lori Curtis Krusell, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

A preponderance of the evidence establishes that the petitioner began working for her public employer four days before the date appearing in the records of the respondent retirement boards. The boards must correct their records and recompute the petitioner's retirement benefits.

DECISION

Petitioner Lisa Mendel appeals from a decision of the Berkshire County Retirement Board (Berkshire board) declining to increase her tally of creditable service for retirement purposes by four days. On the Berkshire board's motion, the Massachusetts Teachers' Retirement System (MTRS) was joined as a respondent. I held an evidentiary hearing on February 18, 2025, at which the witnesses were Ms. Mendel, her former colleague P.J. Pannesco, and Berkshire board executive Sheila LaBarbera. I admitted into evidence exhibits marked 1-17, 20-22, and 24.¹

¹ Proposed exhibits nos. 18-19, 23 were withdrawn. I overruled a hearsay objection to exhibit 17, an affidavit, based on G.L. c. 30A, § 11(2), and *Embers of Salisbury, Inc. v. Alcoholic*

Findings of Fact

I find the following facts.

1. As of 1989, Ms. Mendel was employed by an accounting firm. In August of that year, she applied for a position at Mount Greylock Regional High School as a full-time secretary to one of the school's assistant superintendents. Ms. Mendel soon interviewed with the assistant superintendent and with another, more experienced secretary.² After that, the other secretary remained in touch, updating Ms. Mendel that she was likely to be hired and would probably be asked to start work on a short timeframe. (Tr. 20-24, 31-40.)

2. On Thursday, August 31, 1989, the other secretary telephoned Ms. Mendel to say that she had gotten the job. The other secretary asked how soon Ms. Mendel could start. Ms. Mendel responded that she would need to work one more day at the accounting firm—Friday, September 1—but could report to the school as soon as the afternoon of that day. (Tr. 34-40, 55.)

3. At approximately 4:00 pm on Friday, September 1, 1989, Ms. Mendel arrived at the school and got to work, remaining there until approximately 7:00 pm. Classes were scheduled to begin immediately after the Labor Day weekend, i.e., on the following Tuesday. Ms. Mendel was tasked with preparing packets of materials for the school's teachers. This task became a regular feature of Ms. Mendel's workload in subsequent years. (Tr. 40-45, 54-55; exhibit 17.)

Beverages Control Comm'n, 401 Mass. 526, 530-31 (1988). By contrast, I excluded hearsay declarations offered through Ms. LaBarbera largely because the declarant had not been identified as a potential witness before the hearing. *Cf. id.* at 530-31.

² Both the assistant superintendent and the other secretary have passed away. (Tr. 46.)

4. Ms. Mendel worked on that first day alongside the assistant superintendent and the other secretary. Mr. Pannesco, a counselor to struggling students, was also present. On his way to or from the assistant superintendent's office, Mr. Pannesco was introduced by the assistant superintendent to Ms. Mendel, who was contending with an imposing stack of paperwork. (Tr. 45-46, 108-122.)

5. Ms. Mendel completed a stack of new-hire forms on September 13, 1989, with assistance and guidance from the school's payroll officer.³ The paperwork included a form for enrollment in the retirement system administered by the Berkshire board. In a field on the form asking for her start date, Ms. Mendel entered "9/5/1989," the first day of the school year. She does not recall whether or why she was told to use that date.⁴ Around the same time, September 5 was identified as Ms. Mendel's start date in minutes of a school committee meeting and in Ms. Mendel's appointment letter. (Tr. 61, 68-77, 93-95; exhibits 20-22.)

6. Ms. Mendel's first paycheck was issued on Friday, September 15. That check covered two full work weeks, i.e., September 4-8—including the Labor Day holiday—and September 11-15. Ms. Mendel was also compensated in the same check for an extra 4.5 hours, which she had worked partly on September 1 and partly on the following day. (Tr. 46-51, 56-60, 98-106; exhibit 2.)

7. After eight years of work as a secretary, Ms. Mendel took a job as a teacher at the same school. She became a member of MTRS. Ms. Mendel remained a teacher until the end of

³ The payroll officer has also passed away. (Tr. 140.)

⁴ Ms. Mendel wonders whether the "9/5/1989" date may have been entered on her form by another person. (Tr. 68-73.) I do not find this hypothesis to be more likely than not.

the 2023 school year, when she applied to retire for superannuation. On her application form, she named her first date of service as “09/01/1989.” (Tr. 20-22, 77-81; exhibits 3, 4, 6, 12, 13.)

8. Based on information from the Berkshire board, MTRS identified Ms. Mendel’s first date of service as September 5, 1989. Using that datapoint, MTRS calculated Ms. Mendel’s creditable service for retirement purposes as 33.9167 years, i.e., four days short of thirty-four years. The missing four days would have increased Ms. Mendel’s retirement benefits by approximately \$2,000 per year. (Exhibits 3, 4, 6, 7, 15.)

9. In September 2023, Ms. Mendel wrote to the Berkshire board: “I have worked for Mt. Greylock High School since 1989. . . . There seems to be a difference of five [sic] days needed for me to have completed 8 years as a secretary. . . . I am requesting to buy those five [sic] days of service.” The board denied the request, reasoning that any application to purchase credit must be directed to the member’s current retirement system and cannot be made by a retiree. (Exhibits 1, 7, 14.)

10. Ms. Mendel timely appealed. She also arranged to be represented by counsel. In subsequent submissions, Ms. Mendel rearticulated the form of relief she seeks, namely: revisions to the two boards’ records to reflect that her first date of service was September 1, 1989. The boards maintained in response that no such revisions were warranted. The case was tried on the basis of these updated positions. (Exhibit 10. *Cf.* Mass. R. Civ. P. 15(b).)

Analysis

Creditable service is one of the elements that determines the amount of a public employee’s retirement benefits. *See* G.L. c. 32, § 5(2)(a). As a rule, employees must be credited with the entire periods during which they worked for Massachusetts governmental units while maintaining membership in Massachusetts retirement systems. *See id.* § 4(1)(a).

As a factual matter, Ms. Mendel began working for a governmental unit on September 1, 1989. She is entitled to be viewed as having established her retirement-system membership on that day. *See Worcester Reg'l Ret. Bd. v. Contributory Ret. Appeal Bd. (Pierce)*, 92 Mass. App. Ct. 497, 499-501 (2017); *Bliss v. Bristol Cty. Ret. Bd.*, No. CR-20-138, 2022 WL 9619036, at *2 (Div. Admin. Law App. March 25, 2022). It is true that the two boards originally had good reason to treat September 5, 1989 as Ms. Mendel's first date of service: they drew that date from Ms. Mendel's own enrollment form. Nonetheless, an error in a board's records is properly correctable even when it originated with the member's own inaccurate paperwork. *See G.L. c. 32, § 20(5)(c)(2); Boston Ret. Bd. v. McCormick*, 345 Mass. 692, 698 (1963); *Duprey v. State Bd. of Ret.*, No. CR-21-209, 2024 WL 664419, at *3 (Div. Admin. Law App. Feb. 9, 2024).

The boards suggest that, even if Ms. Mendel performed work on September 1, 1989, she was a "temporary" worker at that time, becoming a "regular" employee with a right to retirement-system membership only on September 5. *See generally Atherton v. Beverly Ret. Bd.*, No. CR-05-334, at *3 (Contributory Ret. App. Bd. Aug. 7, 2007). This argument adopts an excessively artificial perspective. On September 1, Ms. Mendel was brought into the office to assist her colleagues with the same type of work that she would continue to perform for the next eight years. By the September 4 holiday, Ms. Mendel was already treated as a payrolled employee entitled to holiday pay. It does not make sense to view Ms. Mendel as having been employed temporarily for one or two days, then discharged for part of a weekend, and then promptly reemployed for years on end as part of an identical but separate engagement. *See Duprey*, 2024 WL 664419, at *3.

The Berkshire board also focuses attention on two of its formal rules. One rule limits system membership to individuals employed "twenty . . . hours per week." *See G.L. c. 32,*

§ 3(1)(d). Ms. Mendel satisfied this rule: she was hired into a full-time position, which she began to fill on September 1. The other Berkshire board rule requires the salaries of all new members to be “appropriated by their county, town, or district.” The intended consequences of this rule are not entirely clear. But it is unlikely that the Berkshire board was trying to exclude—or could have excluded effectively—individuals entitled to system membership under the retirement law’s prescriptions. *See Pierce*, 92 Mass. App. Ct. at 499-501. *Cf. Veksler v. Board of Registration in Dentistry*, 429 Mass. 650, 652 (1999).

Although the parties have not raised the point, it is worth noting that this cannot aptly be viewed as a case of an “employee who . . . failed to become or elected not to become a member.” G.L. c. 32, § 3(3). *See generally Mello v. Massachusetts Teachers’ Ret. Syst.*, No. CR-19-3, 2023 WL 4548406, at *2 (Div. Admin. Law App. July 7, 2023). Ms. Mendel filed her retirement-system paperwork promptly after she began working. She intended at all times for her membership to span her entire period of eligibility. There has been no suggestion that the inaccuracy on her enrollment form was self-serving. What transpired here was “an honest error which can readily and fairly be corrected.” *McCormick*, 345 Mass. at 698.⁵

⁵ The result would not necessarily change even under § 3(3). That section requires any necessary make-up payments to be completed “before the date any retirement allowance becomes effective.” But it does not appear that the correction to Ms. Mendel’s start date will necessitate any make-up payments. *See supra* p. 3, para. 6.

Conclusion and Order

The Berkshire board's decision is VACATED. The Berkshire board and MTRS are both directed to correct their records to reflect that Ms. Mendel's first date of service was September 1, 1989. MTRS is directed to recalculate Ms. Mendel's retirement benefits accordingly.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate