

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Matthew O'Connor,**  
Petitioner,

No. CR-23-0609

Dated: November 15, 2024

v.

**State Board of Retirement,**  
Respondent.

**Appearances:**

For Petitioner: Matthew O'Connor (pro se)

For Respondent: John Durgin, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner worked on a “contract” basis as an adjunct professor at a community college. He later was hired as a permanent assistant dean at the same institution, at which time he became an active member of the state retirement system. The petitioner is ineligible to purchase retirement credit for his work as an adjunct professor, because the job descriptions of his contract and permanent positions were not “substantially similar.” G.L. c. 32, § 4(1)(s).

**DECISION**

Petitioner Matthew O'Connor appeals from a decision of the State Board of Retirement (board) denying his application to purchase retirement credit for a period of “contract” service.

The appeal was submitted on the papers without objection. I admit into evidence exhibits marked 1-13.

**Findings of Fact**

I find the following facts.

1. From May 2007 until September 2015, Mr. O'Connor worked for MassBay Community College (MassBay) as a part-time adjunct professor. His employment was governed by serial one-year contracts. His duties were instructional, focusing on “teaching,” “deliver[ing]

course materials,” “engaging students in the learning process,” and assessing students’ progress. Mr. O’Connor was also required to compose syllabi, undergo continuing education, attend meetings, and collaborate with colleagues. (Exhibits 1, 3, 13.)

2. In September 2015, Mr. O’Connor took a full-time, permanent position as one of MassBay’s assistant deans. He remained in that position until September 2020. His overarching responsibility was to “coordinate organizational and operational aspects” of MassBay’s programming. His specific duties were predominantly administrative and supervisory in nature. They touched on scheduling, hiring, budgeting, marketing, and curriculum development. (Exhibits 1, 3, 6, 9, 10, 12.)

3. In January 2022,<sup>1</sup> Mr. O’Connor presented the board with an application to purchase retirement credit for his years of work as an adjunct professor. The board denied the application, and Mr. O’Connor timely appealed. He reports that he has postponed his retirement pending the outcome of this appeal. (Exhibits 2-4, 11.)

### **Analysis**

Creditable service is among the variables that determine a public employee’s superannuation retirement benefits. Ordinarily, an individual is credited with service that he or she performed as an employee of a governmental unit while maintaining membership in a public retirement system. *See* G.L. c. 32, § 4(1)(a).

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<sup>1</sup> As of that time, Mr. O’Connor had more than the requisite “10 years of creditable service with the state employees’ retirement system,” G.L. c. 32, § 4(1)(s), because he had worked at MassBay in a position otherwise immaterial to this appeal during 1999-2007. On the other hand, it appears that Mr. O’Connor may no longer have been a member “in service” by January 2022. His application was potentially futile for that reason. *See Blatt v. State Bd. of Ret.*, No. CR-20-199, 2022 WL 9619034 (DALA Aug. 26, 2022). It is not necessary to explore this unbriefed issue given the outcome of the current decision.

Specific provisions permit some employees to purchase credit for service that they performed while they were not active retirement-system members. The provision implicated here is G.L. c. 32, § 4(1)(s), which applies to a member of the state retirement system “who, immediately preceding the establishment of membership . . . or re-entry into active service . . . was compensated for service to the commonwealth as a contract employee.” *Id.* Up to four years of “contract” service may be purchased under this section. *Id.* To be eligible, the member is required to have established state-system membership in a position with a “job description . . . substantially similar to the job description of the position for which the member was compensated as a contract employee.” *Id.* The briefs focus on this last requirement.

Mr. O'Connor maintains that his job duties as an adjunct professor were “instrumental” to and “aligned” with his subsequent responsibilities as an assistant dean. The board does not dispute those characterizations. The question is whether the statute’s demand for “substantially similar” positions is satisfied. This question must be resolved in light of the statute’s “plain meaning and . . . the aim of the Legislature.” *Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 648 (2012).

As a matter of plain meaning, the concept of “similarity” spans an array of degrees of congruence: it may denote either “a partial resemblance only” or “sameness in all essential particulars.” *Plymouth Rock Assur. Corp. v. McAlpine*, 32 Mass. App. Ct. 755, 757 (1992). *See* Annotation, *Meaning of Word “Similar,”* 17 A.L.R. 94 (2021). The modifier “substantial” tends to focus the attention on the “essence” or “essentials” of the matters being compared. *See Rosenberg v. JPMorgan Chase & Co.*, 487 Mass. 403, 418-19 (2021); *Bennett v. Newell*, 266 Mass. 127, 131 (1929). Administrative precedents under § 4(1)(s) have thus asked whether an employee discharged the same “core duties” in his or her membership-eligible and pre-

membership positions. See *Florentine v. State Bd. of Ret.*, No. CR-21-236, 2023 WL 8526442 (DALA Dec. 1, 2023); *Gearan v. State Bd. of Ret.*, CR-17-115 (DALA Jan. 4, 2019).

This approach fits with the statute's apparent purpose. Contract employees are workers who "enter into time-limited contracts." *Young v. Contributory Ret. Appeal Bd.*, 486 Mass. 1, 3-4 (2020). They typically are hired, paid, and supervised by Commonwealth personnel. See *Yutkins-Kennedy v. State Bd. of Ret.*, No. CR-19-171, 2021 WL 9697064, at \*4 (DALA Oct. 8, 2021). Permanent and contract employees may perform the same tasks side by side. A single employee may do the same job first as a contract employee and then as a permanent one. It is this scenario in which it may be incongruous for only some of the employee's years of work to be retirement eligible. See *Barker v. State Bd. of Ret.*, No. CR-07-155, 2007 WL 2262779, at \*3 (DALA July 20, 2007). Section 4(1)(s) mitigates this dissonance, which is not fully present when an employee works one job as a contract employee, then an essentially different job on a permanent basis.

Mr. O'Connor's duties as an adjunct professor overlapped with the duties that he later discharged as an assistant dean. But the two positions differed at their cores: Mr. O'Connor was first a teacher, then an administrator. See *Gearan, supra*. There is nothing anomalous about only one of these distinct jobs being eligible for retirement credit. The type of "substantial similarity" that § 4(1)(s) contemplates was thus absent.

### **Conclusion and Order**

In view of the foregoing, the board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate