

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

**Division of Administrative Law
Appeals**

Walter Paschal,
Petitioner

Docket No. CR-24-0238

v.

State Board of Retirement,
Respondent

Dated: January 31, 2025

Appearance for Petitioner:

Walter Paschal, *pro se*

Appearance for Respondent:

John Durgin, Esq.

Administrative Magistrate:

Bonney Cashin

Summary of Decision

Petitioner sought to purchase several periods of contract service as a college basketball coach. 941 CMR 2.09(3)(e) prohibits a break of more than 180 calendar days between separate periods of otherwise eligible contract service. Petitioner's 222-day break in service between March 11, 2012 and October 19, 2012, prevents him from purchasing *any* earlier service.

DECISION

Introduction

On March 29, 2024, the petitioner Walter Paschal, timely appealed under G.L. c. 32, § 16(4) the decision of the respondent State Board of Retirement, which denied in part his application to purchase creditable service.

Without objection, this matter was scheduled to be decided on written submissions under 801 CMR 1.01(10)(b). Each party filed a memorandum, and the Board filed 11 exhibits, as described in its memorandum filed on August 1, 2024. With his appeal, Mr. Paschal submitted the Board's two decision letters, which the Board also had filed. Mr. Paschal filed a document from the Fitchburg State University Athletics Department describing his job duties. I admit the following documents in evidence and mark them 1-11.

1. New Member Enrollment Form.
2. Buyback Request Forms dated October 4 and 6, 2022.
3. Board letter to Mr. Paschal dated April 19, 2023.
4. Fitchburg State University letter to Board dated November 8, 2022.
5. Buyback Request Forms completed by Mr. Paschal and Fitchburg State dated February 15, 2023.
6. Email between Fitchburg State and Board dated November 8, 2023, and updated Buyback Form dated December 19, 2022.
7. MA Office of the Comptroller financial records.
8. Board decision denying Mr. Paschal's buyback purchase in part dated March 15, 2024.
9. Board decision approving Mr. Paschal's buyback purchase in part dated March 15, 2024.
10. Appeal filed March 29, 2024.
11. Fitchburg State University Athletics Department Head Women's Basketball Coach job duties.

FINDINGS OF FACT

Based upon the exhibits and the reasonable inferences from them, I make the following findings of fact:

1. Between 1999 and March 13, 2013, Walter Paschal was employed seasonally under a series of contracts at Fitchburg State University as head coach of the women's basketball program. (Exhibits 2, 7.)

2. Mr. Paschal accepted a full-time position in the same capacity starting June 16, 2013. He became a member of the Massachusetts State Employees Retirement System on June 10, 2013. (Exhibit 1.)

3. Mr. Paschal sought to buy back his contract service as head basketball coach. The Board acted on the most recently filed contract buyback form, which confirmed his position. (Exhibit 6.)

4. The chart appended to the most recent contract buyback form shows Mr. Paschal's verified periods of employment between June 10, 2006 and March 13, 2013 as follows:

6/10/06-6/24/06
5/26/07-6/09/07
10/25/08-3/14/09
10/24/09-3/13/10
10/23/10-3/12/11
10/22/11-3/10/12
10/20/12-3/09/13

(Exhibit 6.)

5. On March 15, 2024, the Board denied Mr. Paschal's request to buy back his contract service from June 6, 2006 to March 10, 2012. In a separate letter, the Board

approved his request to buy back service from October 20, 2012 to March 9, 2013.

(Exhibits 8, 9.)

6. The Board based its decisions on 941 CMR 2.09(3)(e). (Exhibit 9.)

7. Mr. Pascal filed a timely appeal of the Board's denial on March 29, 2023.

(Exhibit 10.)

DISCUSSION

Mr. Pascal's contract service buyback is governed by G. L. c.32, § 4(1)(s) and its implementing regulation, 941 CMR 2.09. G.L. c. 32, § 4(1)(s) provides in pertinent part that:

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 for any department, agency, board or commission of the commonwealth may establish as creditable service up to 4 years of that service, if the member has 10 years of creditable service with the state employees' retirement system, and if the job description of the member in the position which the member holds upon entry into service or re-entry into active service is substantially similar to the job description of the position for which the member was compensated as a contract employee.

G. L. c.32, sec. 4(1)(s). The regulations at 941 CMR 2.09 provide additional clarification regarding the eligibility of contract service as creditable service. 941 CMR 2.09(3)(e) provides that: "The contract employee service being purchased must have immediately preceded membership or re-entry into the MSERS. For purposes of 941 CMR 2.09 "immediately preceded" shall mean within 180 calendar days."

The 180-day period applies in two circumstances. The regulation prohibits a period of more than 180 calendar days between the contract service sought to be purchased and membership in MSERS. *Campbell v. State Bd. of Retirement*, CR-13-227

(Division of Admin. Law Appeals June 19, 2015). Nor can there be a break of more than 180 calendar days between separate periods of eligible contract service. *Harrington v. State Bd. of Retirement*, CR-18-0337 (Division of Admin. Law Appeals Feb. 15, 2019).

Mr. Pascal ran afoul of the latter circumstance. Likely because his coaching position was seasonal, his employment period for the years he sought to purchase contract service was about 4.5 months or less. The break in service of 222 days between March 11, 2012 and October 19, 2012, prevents him from purchasing *any* earlier service. He was able to purchase the employment period from October 20, 2012 to March 9, 2013 because it ended less than 180 days from June 10, 2013, when he became a member of MSERS.

The Contributory Retirement Appeal Board (“CRAB”) and the Division of Administrative Law Appeals (“DALA”) are without authority to extend the 180-day period. “[A] properly promulgated regulation has the force of law . . . and must be accorded all the deference due to a statute.” *Massachusetts Teachers’ Retirement System v. Contributory Retirement Appeal Bd.*, 466 Mass. 292, 297 (2013), *citing Borden, Inc. v. Comm’r of Public Health*, 388 Mass. 707, 723, *cert. denied sub nom. Formaldehyde Inst., Inc. v. Frechette*, 464 U.S. 936 (1983). When a properly promulgated regulation reflects a reasonable interpretation of the statute, an adjudicatory agency such as CRAB (and DALA) has an obligation to follow it. *See Massachusetts Teachers’ Retirement System*, 466 Mass. at 297.

CONCLUSION

The Board correctly applied G. L. c.32, § 4(1)(s), and 941 CMR 2.09(3)(e) to Mr. Paschal's employment history. Its decision is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin

Bonney Cashin
Administrative Magistrate

DATED: January 31, 2025