

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

John T. Reynolds,
Petitioner,

Docket No.: CR-24-0384

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: John T. Reynolds, pro se

For Respondent: Matthew Szafranski, Esq.

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The petitioner appeals the State Board of Retirement's denial of his application to purchase prior service for three contract positions he held with a community college. The Board's denial was based on its conclusion that the petitioner was not eligible to purchase the service because he provided it as an independent contractor, not as a contract employee.

The common law control test governs whether the petitioner was a contract employee or an independent contractor. For all of the positions at issue in this appeal, the evidence establishes that the control exercised by the college over the manner in which the petitioner provided his services was more consistent with an employer-employee relationship than an independent contractor relationship.

Moreover, the evidence establishes that the job description for one of these positions was substantially similar to the job description for his position as a regular employee, another prerequisite for the purchase of his prior service. Accordingly, the Board's decision is reversed as to that position. The petitioner lacks documentation sufficient to compare the job descriptions of the other contract service positions and his position as a regular employee. The Board's decision as to those other two positions is affirmed.

DECISION

The Petitioner, John T. Reynolds, appeals the decision by the State Board of Retirement (“the Board”) to deny his application to purchase prior service for his work at Springfield Technical Community College (“STCC”). I held and recorded an evidentiary hearing on September 15, 2025. I admitted 19 exhibits into evidence.¹ Mr. Reynolds testified on his own behalf; Vincent Yacovone, the former Coordinator for Instructional Technologies and former Director of the Deliso Video Conferencing Center (“DVC”) at STCC also testified on Mr. Reynold’s behalf. At the conclusion of the hearing, Mr. Reynolds made a closing statement. On November 24, 2025, the Board filed a closing memorandum, whereupon I closed the administrative record.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. STCC is a public institution of higher education. G.L. c. 15A, § 5.
2. Mr. Reynolds began working at STCC as an audio-video consultant sometime before September 2003. (Reynolds Testimony; Yacovone Testimony.)

2003 to 2007

3. From sometime in 2003 to April 2007, Mr. Reynolds set up and facilitated sound, lighting, and projection for various college events, such as presentations, classes, and conferences. He also recorded and edited videos, set up videoconferences, and created instructional media to support various departments. (Reynolds Testimony; Yacovone Testimony.)

¹ I admitted exhibits 16-19, proposed by Mr. Reynolds, over the Board’s objection to their relevance.

4. Some of these services were performed in connection with the DVC, a college entity that provided various audio-video services, such as creating instructional videos and providing teleconferencing in support of the academic needs of the college. The DVC also provided audio-video services for individuals outside the college community (for a fee), but that was only a small part of the DVC's work. (Reynolds Testimony; Yacovone Testimony; Exhibit 4.)

5. Mr. Reynolds was paid by STCC on an hourly basis for his services. (Exhibit 4; Exhibit 7; Yacovone Testimony.) Mr. Reynolds submitted invoices for the work he performed. Sometimes the invoices characterized his work in general terms (for "services rendered"); sometimes they listed specific events or tasks ("Mass Dept of Public Health Preparedness," for example). (Exhibit 7; Exhibit 8.)

6. Although most of the invoices that Mr. Reynolds submitted to STCC during this period described him as an "independent audio/video consultant," he rarely performed audio-video work outside of STCC. (Reynolds Testimony; Exhibit 7, Exhibit 8.)²

7. Mr. Reynolds was not required to be present on campus every day, but he chose to be there most days, even if he did not have a particular assignment that day. (Reynolds Testimony.)

8. Mr. Reynolds's hours varied. He had no set schedule. On some days he would work as few as four hours; other days he worked as many as twelve hours. His invoices for this period reflect a pattern of steady, but variable work. (Reynolds Testimony; Exhibit 7.)

² It is not clear why Mr. Reynolds chose to refer to himself as an "independent audio/video consultant" in these invoices. It appears that he believed that was an appropriate designation because he was submitting invoices for his work rather than receiving a regular salary. (Reynolds Testimony.)

9. For his work providing audio-visual services for college events, Mr. Reynolds would typically receive assignments via an e-mail from college staff specifying the location, where the equipment should be set up, and what he needed to do. His assignments for other services, such as creating instructional media, were provided by college staff as well. (Reynolds Testimony; Yacovone Testimony; Exhibit 16.)

10. He performed his services on campus. (Reynolds Testimony.)³

11. He used STCC's equipment when providing his services. (Reynolds Testimony; Yacovone Testimony.)

12. From at least 2004 through 2007, Mr. Reynolds received federal income tax forms 1099-MISC, which characterized his income as "nonemployee compensation." (Exhibit 12.)⁴

2007 to 2009

13. In April 2007, Mr. Reynolds's role within STCC shifted. Instead of providing audio-visual services on an ad hoc basis, he began to work a regular eight-hour per day schedule, dividing his daily work evenly between the DVC and the National Center for Information and Communications Technologies ("the NCICT"), which is part of STCC and was using grant money

³ My use of "campus" here includes the STCC technology park across the street from what I take to be the main college area.

⁴ IRS Form 1099-MISC reports income paid to a person that is not wages, salaries, or tips. *Murphy v. State Bd. of Ret.*, CR-17-519, 2025 WL 831260, at *11 n.4 (Div. Admin. L. App. Mar. 7, 2025).

from the National Science Foundation (“NSF”) for exploring and providing public education about technology issues. (Reynolds Testimony; Exhibit 7.)⁵

14. He continued to submit invoices for his work. The invoices from this time-period show that he consistently divided his time between the DVC and the NCICT. They reflect that, on a given day, he would typically spend four hours working for the DVC and four hours working for the NCICT. He worked every day and submitted weekly timeslips. (Reynolds Testimony; Exhibit 7.)

15. The job posting for the DVC position recites the following job duties for the position:

- Managing DVC production and administrative operations.
- Controlling the budget and allocating resources.
- Holding regular meetings with the DVC Team to discuss production. Supervising the progress of the project from production and post production to delivery.
- Develop relationships with potential new and returning clients.
- Coordination and facilitation of video conference and other various DVC services.
- Pulling together all the strands of creative and practical talent involved in the project to create a team.
- Facilitate tours of the DVC to potential clients.
- Maintain videoconference and video production equipment.
- Create and develop graphics for media projects.
- Facilitate videotaping and audio recording of video production sessions including some on location.
- Edit audio and video projects for delivery and upload to social networking websites.
- Organize and maintain videotape and DVD archives.
- Design and render projects for DVD authoring and duplication.
- Organize shooting schedules.
- Troubleshooting.

⁵ Before 2008, the NCICT was known as the National Center for Telecommunications Technologies. I use NCICT throughout to avoid confusion.

- Bringing the finished production in on budget.
- Attend regular DVC Development Team meetings.
- Follow through with the DVC Development Team strategies and systems.
- Deliver media projects to clients.

(Exhibit 14.)⁶

16. Most of his duties involved audio-visual services – primarily creating and distributing video content and facilitating videoconferences. Mr. Reynolds had some budgeting and administrative responsibilities, developed relationships with clients, organized and maintained archive materials, and attended development meetings, but his primary duties involved the provision of audio-visual services. (Reynolds Testimony.)

17. Mr. Reynolds received his DVC assignments from the DVC development team or from STCC’s Division of Business and Economic Development. (Reynolds Testimony.)

18. For his work for the NCICT, Mr. Reynolds recorded national conferences for the NCICT and uploaded those recordings to YouTube. As technology evolved, Mr. Reynolds livestreamed NCICT conferences. He also created or facilitated and then distributed audiovisual content, including podcast episodes. (Reynolds Testimony; Exhibit 5; Exhibit 13.)

19. Mr. Reynolds received NCICT assignments from the principal investigator for the grant (that is, the person at STCC in charge of implementing the programs funded by the NSF grant). (Reynolds Testimony.)

⁶ The document is undated, but there does not appear to be any dispute that it fairly reflects the duties of the position when Mr. Reynolds held it. The Board proposed the document as an exhibit, and although Mr. Reynolds testified that he thinks the document gives the erroneous impression that he spent more of his time performing administrative duties than he actually did, he did not dispute that he performed the listed duties.

20. Mr. Reynolds would also occasionally perform some audio-visual work for specific college events that fell outside the scope of his responsibilities to the DVC and NCICT, but these were on an ad hoc basis. Specific payment arrangements needed to be made for these services because the DVC and the NCICT could not or would not pay for those services out of their own internal budgets. (Reynolds Testimony.)

21. For both his DVC and NCICT work, he used STCC's equipment and performed his services on campus. (Reynolds Testimony; Yacavone Testimony.)

22. From 2007 through 2009, Mr. Reynolds received federal income tax forms 1099-MISC, characterizing his income as "nonemployee compensation." (Exhibit 12.)

2009 to 2013

23. On May 9, 2009, STCC hired Mr. Reynolds as a permanent, full-time employee at the NCICT as a staff assistant. He became a member of the State Retirement System. The change in position coincided with the ending of one grant and the commencement of a new grant. (Reynolds Testimony.)

24. The job posting for the staff assistant position for the NCICT (dated April 14, 2009) recites the following responsibilities:

Develop and execute web content and compile audio and video as required. Interact with national partners to receive and provide multimedia (audio and video) content in an accurate and timely manner. Oversee the Center's computer hardware and software technical support for IBM compatible and Apple computers including servers.

(Exhibit 13.)

25. After Mr. Reynolds moved from his contract positions to his NCICT staff assistant position, he (to use the principal investigator's words) "continued to provide audio and video

(multimedia) for use in disseminating grant content.” (Exhibit 5.) In his NCICT staff assistant position, Mr. Reynolds performed the same sort of audio-visual work that he has performed in his NCICT contract position. (Reynolds Testimony.)

26. In 2013, STCC hired Mr. Reynolds to be a campus event coordinator, a position that he continues to hold. In this role, Mr. Reynolds facilitates the use of audio-video equipment for college events and coordinates various campus events. (Reynolds Testimony.)

Application to Purchase Creditable Service

27. By application dated March 2, 2023, Mr. Reynold applied to purchase creditable service from 2004 to 2009. (Exhibit 6.)

28. In a letter dated June 25, 2024, the Board denied Mr. Reynold’s application on the ground that he was an independent contractor during those periods and was therefore not entitled to purchase the service under G.L. c. 32, § 4(1)(s). (Exhibit 15.)

29. On July 10, 2024, Mr. Reynolds filed a timely appeal of that denial.

ANALYSIS

Massachusetts public employees belong to contributory retirement systems that are governed by Chapter 32 of the Massachusetts General Laws. These employees are generally eligible for membership and must contribute to the system through payroll deductions. *Young v. Contributory Ret. App. Bd.*, 486 Mass 1, 3 (2020) (citing G.L. c. 32, §§ 1, 3(2)(a)(x), 22(1)(b)). When a member retires, they receive a monthly retirement allowance if they have accrued enough creditable service. *Id.* (citing G.L. c. 32, §§ 5, 10).

Creditable service is typically based, in part, on the length of a member’s employment for the Commonwealth while they were a member of a public retirement system. *Id.* However,

various statutory provisions allow employees to purchase credit for services they performed before becoming a member of a public retirement system. Specifically, under G.L. c. 32, § 4(1)(s):

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.

Although prior service as a contract employee may be purchased, prior service as an independent contractor cannot be purchased. *Holt v. Cambridge Ret. Bd.*, CR-10-593, at *8 (Div. Admin. L. App. Mar. 27, 2015). Accordingly, an individual seeking to purchase prior service must show that the service was rendered as a contract employee and not as an independent contractor. The burden rests with the individual seeking to make the purchase to establish that his or her prior service was rendered as a contract employee rather than as an independent contractor. *Twomey v. Teachers' Ret. Sys.*, CR-05-1305, at *8 (Contrib. Ret. App. Bd. Oct. 3, 2008).

Here, Mr. Reynolds seeks to purchase three prior positions: the position in which he provided audiovisual services college-wide until April 2007 (his "college-wide contract service"), the position in which he provided services in connection with the DVC from April 2007 to May 2009 (his "DVC contract service"), and the position in which he provided services in connection with the NCICT from April 2007 to May 2009 (his "NCICT contract service"). As noted above, Mr. Reynolds's DVC contract position and his NCICT contract position were concurrent – he split his time evenly between the two from April 2007 to May 2009.

Because Mr. Reynolds seeks to purchase prior service for his college-wide contract service, DVC contract service, and NCICT contract service, he must show that in these positions he was a contract employee, rather than an independent contractor. If he establishes that he was a contract employee for one or more of those positions, he must then establish that the job descriptions for these positions were “substantially similar” to job description for his NCICT staff assistant position.⁷

In what follows, I will first discuss whether Mr. Reynolds was a contract employee or independent contractor in his contract positions. I will then discuss whether Mr. Reynolds meets his burden of demonstrating that the job descriptions for those positions were substantially similar to the job description for his position as a regular employee.

Contract Employee Versus Independent Contractor

In Massachusetts, one test for determining whether an individual is an employee or an independent contract is the three-part test recited in G.L. c. 149, § 148B.⁸ This is the test upon

⁷ One additional requirement bears brief mention: to be eligible for purchase, the contract position must have “immediately preceded” membership in the retirement system. 941 CMR 2.09(3)(e). Consecutive periods of contract service may be purchased so long as the periods between the contract service positions do not exceed 180 days. 941 CMR 2.09(3)(e)(1). The Board does not dispute that all of the contract positions at issue in this appeal meet this requirement.

⁸ Under the independent contractor statute, which is used for purposes of the Massachusetts Wage Act (Chapter 148) and the Massachusetts Minimum Wage Act (Chapter 151), an individual performing services is presumed to be an employee, rather than an independent contractor, unless the putative employer can establish all three of the following: “(1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; (2) the service is performed outside the usual course of the business of the employer; and (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.” G.L. c. 149, § 148B.

which the Board relies in its post-hearing briefing, and several prior decisions by this Division have employed it. *See, e.g., Gorski v. Mass. Tchrs.' Ret. Sys.*, CR-18-544, 2022 WL 16921432, at *2-3 (Mass. Div. Admin. L. App. Feb. 3, 2022); *Pollard v. Berkshire Cnty. Ret. Sys.*, CR-08-803 (Mass. Div. Admin. L. App. June 7, 2013).

The Contributory Retirement Appeal Board (“CRAB”), however, has held that, for purposes of Chapter 32, the standard to be applied is the common law control test. *Cook v. Northampton Ret. Bd.*, CR-13-262, 2018 WL 11681993, at *3-4 (Contrib. Ret. App. Bd. Apr. 2, 2018); *Suzuki v. Arlington Contrib. Ret. App. Bd.*, CR-08-0119, at *5 (Contrib. Ret. App. Bd. Oct. 28, 2010). Because CRAB’s determinations regarding contributory retirement law are binding on this Division, *Fahey v. Boston Ret. Bd.*, CR-15-630 (Div. Admin. L. App. Nov. 2, 2016), I will evaluate Mr. Reynold’s positions under the common law control test.⁹

There are at least three other statutes that contain standards for determining whether an individual is an employee or independent contractor: G.L. c. 152, § 1 (pertaining to the Massachusetts Workers Compensation Act); G.L. c. 151A, § 2 (pertaining to the Massachusetts Unemployment Insurance Law); and G.L. c. 62B, § 1 (pertaining to the Massachusetts Withholding Tax Law).

⁹ CRAB applies the common law control test rather than the test set forth in the independent contractor statute because the Legislature did not elect to apply the independent contractor statute to the Commonwealth’s contributory retirement statute, and the common law control test is the default standard typically applied in the absence of legislative direction to the contrary. *Cook, supra; Suzuki, supra*. Although it follows the common law control test, CRAB acknowledges that the test was originally developed to determine the scope of an employer’s respondeat superior tort liability and thus may not be a perfect fit for the very different needs and purposes of Chapter 32. *Twomey, supra*, at *6 (observing that while “the control test may logically be employed to minimize the risk of causing tortious harm to others,’ it has ‘no necessary relation to programs with other objects’” (quoting Benjamin S. Asia, *Employment Relation: Common-Law Concept and Legislative Definition*, 55 Yale L.J. 76, 77 (1945))).

As the name implies, under the control test, “the most prominent, if not the controlling criterion is the degree to which the employer controls the contractor’s work.” *Cook, supra*, at *3 (citation and internal quotation marks omitted). The control in question is not concerned principally with “the end product or the completion of [] duties” – employers typically exercise that sort of control over the work of both independent contractors and employees alike – but instead with “the more detailed supervision typical of work as an employee.” *Id.*

There are numerous considerations that can inform the control analysis; they include, but are not limited to: (1) the duration of the relationship between the individual and the putative employer; (2) how the work was assigned, including whether the putative employer could assign additional tasks; (3) whether the work was performed at the putative employer’s place of business and with its equipment; (4) requirements and accountability for days and hours worked; (5) whether the individual received performance evaluations; (6) whether he or she supervised other staff or participated in hiring decisions; and (7) whether the work performed or supervision received changed once the individual became a regular full-time employee. *Cook, supra*, at *3; *Crowley v. Contributory Ret. App. Bd.*, 73 Mass. App. Ct. 1103 (2008) (unpublished disposition); *Holt, supra*, at *10 (citing *Nationwide Mut. Ins. v. Darden*, 503 U.S. 318, 323-24 (1992)).

Turning to Mr. Reynolds’s college-wide service, he performed this work for at least three and one-quarter years. He provided this service almost exclusively for STCC. These circumstances indicate that his assignments were not episodic one-off engagements, but were part of an ongoing relationship in which he was, practically speaking, reliant upon STCC for his livelihood. Accordingly, these facts are suggestive of STCC’s ability to control Mr. Reynolds’s performance of his duties. *See Holt, supra* (citation omitted) (observing that factors used for

determining extent of control include “the duration of the relationship between the parties”); *cf. Boston Bicycle Couriers, Inc. v. Deputy Dir. of Div. of Emp. and Training*, 56 Mass. App. Ct. 473, 482 (2002) (applying independent contractor statute and observing that individual’s reliance on putative employer suggested that his work was performed as an employee not an independent contractor).

Although Mr. Reynolds received assignments on an ad hoc basis, the general tenor of his relationship with STCC was marked by an overall consistency and continuity. The evidence suggests that although his hours were not set, there was an expectation that he would continue to receive assignments and that he was expected to complete them. Moreover, and critically, the variability in Mr. Reynolds’s schedule appears to have been driven by STCC’s needs and its control over Mr. Reynolds’s workflow. It was not driven by entrepreneurial independence on the part of Mr. Reynolds to pick and choose his assignments. STCC was exercising control over the variability in Mr. Reynolds’s day-to-day work life.

As for the actual performance of Mr. Reynold’s audiovisual services, he used STCC’s equipment, did his work at STCC, and received his assignments from STCC staff – who told him where and when to perform his tasks and provided him with instructions on what he needed to do.¹⁰ These are all indicia of STCC’s control. *Crowley, supra*, at *3.

¹⁰ Although Mr. Reynolds was not required to be present on campus if he did not have an assignment, he had to be on campus if he was to perform his work duties. Thus, while it is true that he did not need to be on campus every single day and was present on a more or less daily basis because he chose to be, the fact remains that he did not have the liberty to decide to perform his services for STCC elsewhere.

I acknowledge that Mr. Reynolds labeled himself as an “independent audio/visual consultant” in most of his invoices between 2003 and April 2007 and that the tax forms issued by STCC characterized his payments as nonemployee compensation. CRAB has noted that an individual’s understanding of his or her status, “while a significant factor, is not controlling.” *Cook, supra*, at *5. It has also observed that the employee’s tax status is a factor to be considered. These factors are relevant to the extent they indicate STCC’s control over how Mr. Reynolds completed his work duties. *Id.*; *Cf. Salmons v. Anthony Mfg. Co.*, 9 Mass. L. Rptr. 263, 1998 WL 795056, at *3 (Mass. Super. Ct. Nov. 5, 1998) (quoting Restatement (Second) of Agency § 220(2), cmt. m (1958) (noting “belief as to the existence of a master-servant relationship is relevant only “insofar as such belief indicates an assumption of control by the one and submission to control by the other” (internal quotation marks omitted))). Here, nothing in the record suggests that Mr. Reynolds’s decision to identify himself as an independent consultant in his invoices reflects any intention that the performance of his job duties would be free of STCC’s control. Nor is there any evidence in the record that STCC’s decision to characterize his payments as non-employee compensation reflected an intention to accord Mr. Reynolds a free hand in deciding when, where, and how he would be providing his services.

I also acknowledge that the record is silent on other factors that might bear on the application of the control test. There is no evidence that STCC performed reviews of Mr. Reynolds’s performance, for example, or that Mr. Reynolds was subject to policies that applied to regular salaried employees. Nor is there evidence concerning the process by which Mr. Reynolds could request time off. Such evidence might have been relevant to the analysis, but I will not speculate as to what that evidence might have shown. The information that *is* in the

record, however, suffices to meet Mr. Reynolds's burden of establishing by a preponderance of the evidence that he was an employee, not an independent contractor, when he provided his college-wide contract services.

The evidence that Mr. Reynolds served as a contract employee, and not an independent contractor, is even stronger with respect to his DVC and NCICT contract service. Most of the indicia of control referenced above also characterized his contract service with the DVC and NCICT. After he took on these positions, he had to report to work each day and submitted weekly timesheets, which was a change from the previous years, and which represents additional control over the day-to-day performance of his duties.

Also, his contract work with the DVC included tasks that one would associate with an employment relationship (e.g., budgeting and administrative responsibilities, developing relationships with clients, and attending development meetings) rather than an independent contractor relationship.

In sum, for these positions, too, Mr. Reynolds was a contract employee and not an independent contractor.

Substantial Similarity

Although Mr. Reynolds has established that he was acting as a contract employee in his college-wide, DVC, and NCICT contract positions, he cannot purchase service for those positions unless he *also* establishes that the job descriptions for those positions are substantially similar to the job description for his NCICT staff assistant position. G.L. c. 32, § 4(1)(s).

The regulation implementing this requirement, 941 CMR 2.09(3)(d), provides that when considering whether two positions are substantially similar, the "characteristics and

requirements for each position shall be determined by the relevant job descriptions, or if there is no job description, other documentation provided by the employers and acceptable to the Board.”

Here, there is a job posting for the permanent, non-contract NCICT staff assistant position. Although this is not a formal job description, it is a document generated by the employer that sets forth a listing of job responsibilities. The Board has considered this document in making its substantial similarity arguments on appeal. Its determination that this document is “acceptable” for this purpose, 941 CMR 2.09(3)(d), is reviewed under an abuse of discretion standard. *See Lydon v. Quincy Ret. Bd.*, CR-17-689 & CR-18-275, 2020 WL 14009726, at *1 (Contrib. Ret. App. Bd Jan. 8, 2020), *aff’d* 2021 WL 4783465 (Suffolk Super. Ct. June 28, 2021), *aff’d* 101 Mass. App. Ct. 365 (2022) (observing that rule providing that a board “may” accept certain documents or that certain documents may be considered if “acceptable” to the board confers discretionary authority on the board subject to review for abuse of discretion). The Board’s consideration of this document is sound and reasonable, and I will rely upon it here.

Unfortunately, there is no job description for Mr. Reynolds’s college-wide contract service or his NCICT contract service. Nor is there any documentation, like a job posting, for example, that could serve as a functional substitute for a job description. Accordingly, I lack a basis for determining whether the job descriptions for those two positions are substantially similar to the job description of the NCICT staff assistant position. Mr. Reynolds has not met his burden of proof on this point and thus may not purchase his college-wide or NCICT contract service.

I reach this conclusion even though, as a practical matter, the testimony would enable me to make a comparison between the positions’ respective duties. The regulation, however, clearly

requires documentation. I am bound by it. *Mass. Teachers' Ret. Sys. v. Contrib. Ret. App. Bd.*, 466 Mass. 292, 296-97 (2013); *Pepin v. Div. of Fisheries & Wildlife*, 467 Mass. 210, 214 (2014).¹¹

The record does, however, contain a job posting for the DVC contract service position. As with the NCICT staff assistant job posting, the Board reasonably relies upon this document in conveying its substantial similarity arguments in this appeal. I conclude that the posting, which outlines various responsibilities, is an acceptable substitute for a formal job description.

I turn now to comparing the DVC contract service position with the NCICT staff assistant position. I conclude that they are substantially similar. "Substantially similar" does not mean identical. See *Sullivan v. State Bd of Ret.*, CR-19-0100, 2023 WL 6195150, at *5 (Div. Admin. L. App. Sept. 15, 2023) (nurse provided similar oversight in two roles even though scale of work was different). The focus is on the "core duties" of the two jobs. *Gearan v. State Bd. of Ret.*, CR-17-115 (Div. Admin. L. App. Jan. 4, 2019). Core duties may be substantially similar even if there are some differences. In *Gearan*, for example, an adjunct college professor transitioned from a contract role to a full-time project director position. In her new role, she assumed additional responsibilities but maintained the same course load and taught the same classes as when she was an adjunct professor. As her core teaching responsibilities were substantially similar in both positions, she was entitled to purchase her prior contract service under G.L. c. 32, § 4(1)(s). *Gearan, supra*, at *12.

¹¹ I note that although the regulation requires documentation, testimony may be admissible to clarify, interpret, or contextualize the written documentation. See, e.g., *Sullivan v. State Bd of Ret.*, CR-19-0100, 2023 WL 6195150, at *3 (Div. Admin. Law App. Sept. 15, 2023) (relying upon member's testimony to better understand job duties recited in written job descriptions).

Here, the core duties involved in Mr. Reynold's DVC contract service were substantially similar to those he performed as a staff assistant for the NCICT. In both positions, the heart of Mr. Reynolds's duties involved the creation and distribution of audiovisual materials.

This is not to suggest that the positions were identical. There were some differences. For example, for NCICT, Mr. Reynolds was frequently interacting with grant partners and distributing audiovisual content to them. For the DVC, Mr. Reynolds would distribute such content to members of the college community and perhaps paying customers outside the college community. I do not, in this case, view differences among the end recipients of the audiovisual content to be material. After all, as noted above, work duties may be substantially similar even if they are performed for entirely different agencies. 941 CMR 2.09(3)(e) ("The contract position and the position upon entry into membership may be with different Commonwealth agencies or departments."). This is not to say that changes in context can never affect the substance of the work duties themselves, or even that there will always be a clear division between work duties and the contexts in which they are performed, only that the differences here are not sufficiently material to render the duties dissimilar.

Nor does it matter that Mr. Reynolds had some ancillary duties in his DVC position (budgeting, for example) that he did not have as an NCICT staff assistant. What matters is the similarity between the core duties. *See Gearan, supra*, at *12 (noting that differences among non-core duties do not preclude a determination that the positions are substantially similar).

As a result, Mr. Reynolds is eligible to purchase creditable service for his DVC contract service.

CONCLUSION AND ORDER

For the foregoing reasons, the Board's decision is affirmed as to Mr. Reynolds's application to purchase his prior college-wide (April 2003 to May 2007) and NCICT contract service (April 2007 to May 2009), but reversed as to its decision to deny Mr. Reynolds's request to purchase his DVC contract service (April 2007 to May 2009).

Dated: May 8, 2026

/s/ Timothy Pomarole

Timothy Pomarole

Administrative Magistrate

DIVISION OF ADMINISTRATIVE LAW APPEALS

14 Summer Street, 4th floor

Malden, MA 02148

Tel: (781) 397-4700

www.mass.gov/dala