

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Alexis St. James,
Petitioner

v.

Docket No. CR-23-0021
Date Issued: Aug. 30, 2024

Boston Retirement System,
Respondent

Appearance for Petitioner:

Alexis St. James, *pro se*

Appearance for Respondent:

Timothy J. Smyth, Esq.
Boston Retirement Board
Boston City Hall, Room 816
Boston, MA 02210

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The Petitioner's appeal is dismissed because the Board did not issue an appealable decision. *See Barnstable County Retirement Bd. v. PERAC*, Decision on Remand from Superior Court, CR-07-163, at *1-2 (CRAB Feb. 17, 2012) (appealable decision must inform party of appeal rights). If this appeal was properly before DALA, I would conclude that the Boston Retirement System charged the Petitioner interest for the correct period but used the wrong interest rate. Out-of-state teaching purchases are charged only buyback interest, not actuarial assumed interest. *See* G.L. c. 32, § 3(4).

DECISION

Petitioner Alexis St. James appealed timely under G.L. c. 32, § 16(4) the January 4, 2023 decision of Respondent Boston Retirement System (BRS) denying her request to

waive the interest charges incurred between the date she re-established membership in the BRS and the date she filed her application to purchase service credit for her out-of-state teaching service.

The Division of Administrative Law Appeals determined that this appeal could be submitted on the papers under 801 CMR 1.01(10)(c); neither party objected. On May 24, 2023, DALA ordered the parties to file pre-hearing memoranda and proposed exhibits. On June 29, 2023, Petitioner filed her memorandum and six proposed exhibits. On March 2, 2024, the BRS submitted its memorandum and an additional four exhibits, marked Exs. 7-10. I hereby enter the proposed exhibits into evidence as marked. (Exs. 1-10.) I also enter two additional exhibits: correspondence between Petitioner and the BRS, dated November 8 and 9, 2022 (Ex. 11) and Petitioner's appeal letter, dated January 11, 2023 (Ex. 12.)

FINDINGS OF FACT

I make the following findings of fact:

1. Petitioner Alexis St. James is a school psychologist. She worked for the Commonwealth in the 2003-2004 and 2004-2005 school years. (Ex. 7.)
2. Petitioner next worked in the Boston Public Schools in the 2005-2006 school year and consequently became a BRS member during this period. At the conclusion of the year, she withdrew her retirement contributions from the BRS, thus terminating her BRS membership. (Ex. 7.)
3. From September 2006 through June 2009, Petitioner worked in public schools in the Contoocook Valley School District in New Hampshire. She was a member

of the New Hampshire state retirement system. She made regular retirement contributions while she worked there. (Ex. 7.)

4. From 2009 through 2011, Petitioner worked at UMass and was consequently a State Employees' Retirement System member. (Ex. 7.)

5. Beginning in August 2012, Petitioner started working again in Boston Public Schools. By way of this job, she re-established membership in the BRS. (Ex. 7.)

6. Because Petitioner had terminated her BRS membership by withdrawing her contributions in 2006, she was required to file another new enrollment form. On August 22, 2012, Petitioner filed the form, which asked for "past membership history with any other contributory retirement system in Massachusetts." She responded with the following list: City of Boston, State of NH, State of MA, and "MSERS (through UMass Boston)." (Ex. 7.)

7. From 2012 through most of 2017, neither Petitioner nor BRS initiated a transfer of her MSERS contributions or acted on the possibility of purchasing her New Hampshire teaching service. (*See* exhibits generally.)

8. However, on October 19, 2017, Petitioner emailed the BRS, inquiring in part:

When I was rehired by BPS, I filed paperwork indicating that I wished to transfer my years of service in the NH (from 2006-2009) and UMass (2009-2011) to the Boston Retirement System. However, I do not believe that the years were ever transferred as I am still receiving statements from the NH retirement system and the MA State Employees Retirement System. I would like to transfer those years and can furnish the statements from the MA and NH retirement systems. Please let me know where to send those statements, and how to ensure that those years are transferred.

(Exs. 2, 10.)

9. On October 26, 2017, the BRS explained to Petitioner that to receive credit for her New Hampshire teaching service, she must file an out-of-state service purchase form that requires separate papers to be filed by both Petitioner and her New Hampshire employer or retirement system. Once the completed application is filed, the BRS directed, it could process the application and generate a bill for the New Hampshire service. (Ex. 3.)

10. By September 14, 2020, Petitioner and her New Hampshire employer and retirement system filed their completed parts of the out-of-state service purchase forms with the BRS. Petitioner checked “yes” to the question, “Do you have retirement contributions on deposit in another system?” She then listed City of Boston and UMass Boston as the systems. (Exs. 4, 9.)

11. On January 11, 2022, after some confusion over which documents Petitioner and her employer submitted, Petitioner asked BRS for the status of her application. (Ex. 5.)

12. In emails dated November 8 and 9, 2022, the BRS followed up with Petitioner. It informed her that it was not possible for her retirement contributions to be transferred directly from the New Hampshire retirement system to the BRS, and directed her to withdraw her funds from the New Hampshire retirement system before the BRS could continue processing her out-of-state transfer. The BRS also advanced Petitioner a draft invoice for her purchase. (Ex. 11.)

13. On January 4, 2023, BRS issued a final invoice to Petitioner. It required Petitioner to pay \$25,896.99, comprised of \$10,740.51 principal cost and \$15,156.48 interest. The interest was calculated at the actuarial assumed rate of 7.5%. The invoice

included the possibility of a payment plan over as much as five years. The invoice did not provide appeal rights to Petitioner. (Exs. 6, 8.)

14. On January 7, 2023, Petitioner attempted to appeal the BRS's calculation of interest in the invoice. (Ex. 12.)

CONCLUSION AND ORDER

A threshold question is whether this appeal is properly before DALA. Although no party has argued otherwise, a tribunal is duty-bound to assure itself of its own jurisdiction. *Sullivan v. State Bd. of Retirement*, CR-19-435, at *1-2 (CRAB Feb. 8, 2021) (citing *Flynn v. Contributory Retirement App. Bd.*, 17 Mass. App. Ct. 668, 370 (1984)). One potential jurisdictional issue arises from CRAB's holding that "a decision by a retirement board . . . is not an appealable 'decision' . . . unless it . . . expressly states that it is an appealable decision." *Barnstable County Retirement Bd. v. PERAC*, Decision on Remand from Superior Court, CR-07-163, at *1-2 (CRAB Feb. 17, 2012). These requirements protect litigants from missing deadlines of which they are unaware and losing their appeal rights as a result. *Lutes v. Clinton Retirement Bd.*, CR-07-1100, at *2 (CRAB Nov. 16, 2012). If a retirement board's decision is appealable, a party must appeal it within fifteen days of receiving notice of it. G.L. c. 32, § 16(4).

Petitioner's appeal letter states that she is appealing from the BRS's "decision" dated November 8, 2022. She is most likely referring to the email dated November 9, 2022. If she intended to appeal from that decision, there are two problems: the appeal was made significantly more than 15 days after the BRS's email was sent and the email does not include the appeal rights required under *Barnstable*, supra. If she meant to appeal from the January 4, 2023 invoice that she received, theoretically the appeal would

be timely, but the invoice is similarly not an appealable decision because it also does not include appeal rights.

For these reasons, the Petitioner has not lost her appeal rights. She could still ask the Board for a final decision with appeal rights and appeal it to DALA within fifteen days of receiving it. *Decie v. Essex Reg. Retirement Bd.*, CR-09-862, at *4-5 (CRAB Jan. 17, 2013). But, for now, because the BRS's email and invoice were not appealable, the appeal is not properly before DALA.

If DALA had jurisdiction, however, I would make the following conclusions. The purchase of creditable service for out-of-state teaching is governed by G.L. c. 32, § 3(4). It provides, in pertinent part:

Any member in service . . . who had rendered service in any other state for any previous period as a teacher . . . in the public day schools . . . may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms and conditions as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period . . . had such service been rendered in a public school of the commonwealth and had he been a member of the teachers' retirement system during the period the service was rendered

. . .

In addition to the payment of such sum or instalments thereof, such member shall also pay into the annuity savings fund an amount of interest such that at the completion of such payments the value of his accumulated payments, *together with buyback interest, thereon*, actually made on account of such previous out-of-state service, shall equal the value of his accumulated buyback deductions which would have resulted if regular deductions had been made when regular compensation for such service was actually received.

(Emphasis added).

Petitioner argues that she should not be charged interest for the full period listed in her out-of-state service invoice. She contends that the BRS should have informed her of the procedure for receiving credit for her New Hampshire service immediately after she notified the BRS in her 2012 membership application that she had worked in New Hampshire as a teacher. Instead, she became aware of the application procedure only when she asked the BRS in 2017 why she was still getting New Hampshire retirement system statements. Then, 2 years and 10 months later, Petitioner submitted the application. Petitioner concedes that she is responsible for the 2 years and 10 months of interest because she sees herself as responsible for that delay, but the rest of the interest she sees as the BRS's fault.

Even if the BRS wanted to follow Petitioner's logic, it was obligated to follow the statute. Section 3(4) requires applicants for out-of-state service to pay interest back to the date of the previous out-of-state service. For the purpose of calculating interest, the law does not recognize as relevant the date the employee's membership begins or when the member becomes aware of the procedure for purchasing her service. The BRS calculated interest over the correct period.

Contrary to the Petitioner's assertion, the BRS was not specifically obligated to make Petitioner aware that she had an opportunity to purchase her New Hampshire service. *See, e.g., Eduardo v. Boston Retirement Sys.*, CR-17-892, CR-17-944, at *11-12 (DALA Sept. 3, 2021) (retirement board not required to make members aware of retirement law generally). It is true that she listed the New Hampshire service on her membership application, but it was under a section that asked if she had any former Massachusetts government service. This section did not ask Petitioner if she wanted to

purchase any out-of-state service. As soon as the BRS was made aware that Petitioner wished to purchase her New Hampshire service, it promptly informed her how to do it.

There is one additional issue that neither party mentioned but needs to be addressed. Section 3(4) provides for the payment of interest at the *buyback* rate, which is defined as half the actuarial assumed rate. G.L. c. 32, § 1. A calculation sheet submitted into evidence by the BRS, however, states that the *actuarial assumed* rate of 7.5% was used to calculate interest. (Ex. 8.) A quick, back-of-the-envelope calculation confirms that the BRS used the *actuarial assumed* rate, which is incorrect. Regardless of the viability of this particular appeal, the BRS is obligated to correct this error under G.L. c. 32, § 20(5)(c)(2); I direct it to do so.

For the reasons stated above, Petitioner’s appeal is dismissed. If DALA had jurisdiction over the appeal, I would have determined that the BRS calculated interest over the correct period but used the wrong interest rate, which must now be corrected.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Aug. 30, 2024