

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Robert Steele,
Petitioner

v.

Docket No. CR-24-0621
Date: January 30, 2026

State Board of Retirement,
Respondent

Appearance for Petitioner:

Robert Steele, pro se

Appearance for Respondent:

Matthew Szafranski, Esq.

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The petitioner is ineligible to purchase contract service under G.L. c. 32, § 4(1)(s) for the time he worked at the Executive Office of Technology Services and Security (EOTSS) as an employee of IT service management company TekSystems, Inc. He was not a “contract employee” but rather worked for a third-party, for-profit private vendor that was not an instrumentality of the Commonwealth. *See* 941 CMR 2.09(3)(c). Accordingly, the Board’s denial of Mr. Steele’s application is affirmed.

DECISION

Petitioner Robert Steele timely appealed, under G.L. c. 32, § 16(4), the decision of the State Board of Retirement to deny his application to purchase contract service from May 26, 2009, to March 28, 2010, because, as a vendor’s employee, he was not a

“contract employee” for purposes of Chapter 32. On December 9, 2024, the Board filed a motion to dismiss that Mr. Steele opposed on April 2, 2025. The Division of Administrative Law Appeals (DALA) denied it on April 14, 2025. On April 16, 2025, DALA ordered the parties to file prehearing memoranda and proposed exhibits, but the parties chose to rely on the exhibits and arguments they made in the motion and opposition. I held and recorded an evidentiary hearing by Webex on January 27, 2026, during which I admitted six exhibits. (Exs. 1-6.) Mr. Steele testified on his own behalf. The Board called no witnesses. At the end of the hearing, petitioner and respondent made closing arguments.

FINDINGS OF FACT

Based on the petitioner’s testimony and the exhibits in evidence, I make the following findings of fact:

1. Robert Brad Steele works for the commonwealth and is consequently a member of the State Board of Retirement. Currently, he serves as a Deputy Chief Technology Officer at EOTSS. (Testimony; Ex. 1.)
2. Mr. Steele served 6 years in the United States Air Force. He purchased service credit based on this military service. Mr. Steele is satisfied with that purchase and has not appealed that transaction. (Testimony.)
3. After the Air Force, Mr. Steele earned an associate’s degree in computer technology at Fisher College. (Testimony.)

4. Beginning in 1997, Mr. Steele worked for Avaya, a telecommunications and consulting firm. For 8 years, he was a field engineer. For the remaining 4 years, he was a field manager in charge of 29 field engineers. (Testimony.)

5. While he was at Avaya, one of Mr. Steele's clients was the commonwealth. He worked on modernizing and streamlining the telephone and communications systems in the state office building at One Ashburton Place in Boston. (Testimony.)

6. During his work at the commonwealth, Mr. Steele became aware that EOTSS was looking to hire a telecommunications manager. He applied for the job and was interviewed by 3 state employees. (Testimony.)

7. In early May 2009, he was informed that he got the job. That day, he accepted and gave his two weeks' notice to Avaya. A day or two later, a human resources employee informed him that there was a problem. The state was in a hiring freeze, and Mr. Steele could no longer start as a full-time employee (FTE) of the state. (Testimony.)

8. EOTSS offered Mr. Steele a temporary solution. He could start on May 26, 2009, as originally agreed, but he would have to begin as an employee of TekSystems, Inc., a private corporation with offices in Natick. Then, when the hiring freeze ended, he would be made an FTE. Mr. Steele was upset at this sudden news, but he had already given his notice to Avaya so he went along with the state's solution. (Testimony; Ex. 4.)

9. TekSystems was a private, for-profit corporation not created by the commonwealth. (Ex. 2.)

10. Mr. Steele went to the TekSystems offices, where he submitted his resume, an application, and other necessary papers. As everything was in order, TekSystems brought Mr. Steele on as an employee almost immediately and told him he could report to the state on May 26, 2009 to begin the work that he had originally applied for there. It was clear to Mr. Steele that he was an employee of TekSystems during the disputed period. (Testimony; Exs. 3, 4.)

11. Because Mr. Steele was considered a temporary employee by TekSystems, he was not eligible for benefits from them. He did not receive health insurance or participate in any retirement plan. He did, however, make contributions to Social Security in 2009 and 2010. (Testimony; Ex. 3.)

12. EOTSS contracted with TekSystems for Mr. Steele's services, and Mr. Steele worked under those contracts. During this period, Mr. Steele was paid only by TekSystems, as reflected in his W-2 forms from that period. (Testimony; Ex. 4.)

13. Less than a year later, once the hiring freeze was lifted, Mr. Steele began working as an FTE of EOTSS on March 28, 2010. Consequently, his arrangement with TekSystems was terminated. He performed the same work at EOTSS as he had while he was employed by TekSystems. (Testimony.)

14. On September 9, 2024, after he had worked the required ten years, Mr. Steele applied to purchase contract service from May 26, 2009 to March 28, 2010, the period that he worked for TekSystems. (Testimony; Ex. 4.)

15. The Board denied his application on October 11, 2024, because he was not a “contract employee” of the commonwealth, but rather was a vendor’s employee. (Ex. 5.) Later that same day, Mr. Steele timely appealed. (Ex. 6.)

CONCLUSION AND ORDER

When a member retires from public service he may be entitled to a superannuation retirement allowance based in part on his years of creditable service. G.L. c. 32, § 5(2)(a). Section 1 of Chapter 32 defines “creditable service” as “all membership service, prior service and other service for which credit is allowable to any member under the provisions of sections one to twenty-eight inclusive.” G.L. c. 32, § 1. One form of “other service” that a member may purchase under certain circumstances is “contract service” with the Commonwealth.

Section 4(1)(s) of Chapter 32 states:

Any member in service of the state employees’ retirement system who, immediately preceding the establishment of membership 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 . . . is substantially similar to the job description of the position for which the member was compensated as a contract employee.

(Emphasis added.) An employee may not, however, purchase service based on employment for a third-party vendor, even if the employee performed work for the Commonwealth, except in very limited circumstances. *See, e.g., Hogan v. State Bd. of Ret.*, CR-16-0243 (Contributory Ret. App. Bd. June 1, 2021); *Grant v. State Bd. of Ret.*,

CR-22-0542 (Div. Admin. L. App. Dec. 22, 2023); *Seshadri v. State Bd. of Ret.*, CR-15-62 (Div. Admin. L. App. Feb. 5, 2016).

The Board's regulations provide additional context:

The contract service being purchased must have been service as a "contract employee" of the Commonwealth. Except only as otherwise set forth in this sub-section *members who were employees of a vendor or contractor, which was selected and contracted to provide services to the Commonwealth, are specifically excluded from purchasing contract service as creditable service. **The Board may consider as eligible contract service such service provided through a vendor established and operated by, or that functions as an instrumentality of, the Commonwealth or a Commonwealth agency.***

941 CMR 2.09(3)(c) (emphasis added). Although this regulation begins with a general prohibition on the purchase of service credit based on work for a vendor or contractor that the commonwealth selected to provide services, it includes an exception under which the Board may consider such work as "contract service." The member may purchase service if the commonwealth established or operated the member's former employer, or if the employer functioned as an instrumentality of the state or one of its agencies.

Here, the commonwealth did not establish or operate TekSystems. Rather, EOTSS contracted with TekSystems, a for-profit corporation, to hire one of its employees, Mr. Steele, who then provided services to EOTSS. Thus, Mr. Steele cannot purchase his service under the first part of the regulation's exception because the commonwealth did not establish or operate TekSystems.

The Board's regulation also allows for purchase of service if an entity was an "instrumentality of the Commonwealth." Chapter 32 does not define what this means.

The word “instrumentality” can refer to a “means or agency through which a function of another entity is accomplished.” *Black’s Law Dictionary* 919 (10th ed. 2014). Courts considering whether an entity is a state “instrumentality” have looked to the following factors: whether a statute, regulation, or executive order formed the entity; whether the entity performs an “essentially governmental function;” whether the entity “receives or expends public funds[;]” whether the state “controls or supervises the entity; and whether the state is the entity’s essential “owner[.]” *Massachusetts Bay Transp. Auth. Ret. Bd. v. State Ethics Comm’n*, 414 Mass 582, 589-91 (1993). *See also Opinion of the Justices*, 309 Mass. 571-82 (1941); *McMann v. State Ethics Comm’n*, 32 Mass. App. Ct. 421, 425 (1992). The Contributory Retirement Appeal Board, however, has determined that “vendor functioning as an instrumentality of the Commonwealth” means a public entity created by the legislature and placed within state government. *Hogan v. State Bd. of Ret.*, CR-16-243 (Contributory Ret. App. Bd. June 1, 2021). In this case, the legislature did not create TekSystems or place it within state government. There is no evidence in the record to show that the commonwealth controlled or supervised TekSystems, or that it was TekSystems’s “essential owner.” Therefore, TekSystems was not an instrumentality of the commonwealth and did not function as such.

Mr. Steele was fully aware that he was working for a private company. He simply contends that he should still be allowed to purchase his TekSystems service because he ended up working there through no fault of his own. The state hired him and then, after quitting his job at another company but before starting at EOTSS, sent

him to TekSystems to register as an employee there so that he could do the same job that the state wanted him to do, except without employee benefits. It is easy to understand why Mr. Steele was upset about this arrangement at the time and even now, as he quit his job at Avaya and was told only then that he could not start as an FTE at EOTSS. This was a terrible situation, but unfortunately there is nothing that DALA can do about it. DALA only has the power to enforce the law as it is written. We have no equitable powers to fashion a remedy on what is essentially an argument based on fairness. *Bristol Cnty. Ret. Bd. v. Contributory Ret. App. Bd.*, 65 Mass. App. Ct. 443 (2006); *Baumann v. State Bd. of Ret.*, CR-21-0626, at *3 (Div. Admin. L. App. June 9, 2023) (“It is well established that DALA has no equitable powers.”).

Based on the above analysis, I conclude that Mr. Steele cannot purchase service credit based on his time as a TekSystems employee even though he performed work for the commonwealth. The decision of the Board is therefore affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: January 30, 2026