

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Roger Tait,**  
Petitioner,

No. CR-22-0029

Dated: September 13, 2024

v.

**Massachusetts Teachers' Retirement  
System,**  
Respondent.

**Appearances:**

For Petitioner: Roger Tait (pro se)

For Respondent: Lori Curtis Krusell, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The respondent retirement system determined that the petitioner is not entitled to be enrolled in the benefits program known as Retirement Plus. There was no error in that determination, because a preponderance of the evidence does not establish that the petitioner filed a timely form enrolling in the program.

**DECISION**

Petitioner Roger Tait appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) determining that he is not entitled to be enrolled in the benefits program known as Retirement Plus. G.L. c. 32, § 5(4)(i). An evidentiary hearing took place on July 31, 2024. The witnesses were Mr. Tait and his wife, Eileen Tait. I admitted into evidence exhibits marked A-D and five affidavits, all without objection.

**Findings of Fact**

I find the following facts:

1. Mr. Tait began his professional life in medical research. He transitioned into work as a special education teacher in 1997. He has been a teacher and a member of MTRS since then. (Roger Tait testimony.)

2. The benefits program known as Retirement Plus took effect in 2001. During that year, Mr. Tait learned about the program and received a standard election form, which features “yes” and “no” checkboxes to indicate whether the member does or does not wish to enroll. (Roger Tait testimony; Theil affidavit; exhibit A.)

3. Mr. Tait discussed the opportunity to join Retirement Plus with his wife, a slightly more senior teacher. For her part, Mrs. Tait timely enrolled in Retirement Plus, receiving an MTRS postcard that confirmed her successful enrollment. She was under the impression that Mr. Tait had enrolled as well. (Roger Tait testimony; Eileen Tait testimony.)

4. Mr. Tait also spoke about whether to enroll in Retirement Plus with a professional mentor. The mentor expressed a firm view that, given Mr. Tait’s age and seniority level, the program would not benefit him. She has since passed away. (Roger Tait testimony.)

5. MTRS ultimately received from Mr. Tait a Retirement Plus form bearing a “no” checkmark, i.e., indicating a wish *not* to enroll. Only a low-quality, black-and-white photocopy of the form survives in MTRS’s archives. The best interpretation of that form is that an “X” once appeared in its “yes” checkbox, before being whited out. (Exhibit A.)

6. Mr. Tait’s Retirement Plus form was mailed to MTRS either by Mr. Tait himself or by another employee of his school. Mr. Tait’s mentor had access to the form at some point before it was mailed. (Roger Tait testimony.)

7. Mr. Tait has believed for some time that he is enrolled in Retirement Plus. He learned that he is not participating in the program after obtaining an MTRS-generated summary

of his retirement credit. In subsequent correspondence, MTRS declined to allow Mr. Tait to join Retirement Plus belatedly. He took this timely appeal. (Roger Tait testimony; exhibits B-D.)

### Analysis

Retirement Plus allows teachers to make enlarged retirement contributions in exchange for an advantageous benefit formula designed to facilitate early retirement. See G.L. c. 32, § 5(4)(i). The program was introduced by Acts 2000, c. 114, § 2. Individuals who were already teachers at that time were afforded a six-month opportunity to “elect” into the program. *Id.* Teachers who missed their original election deadline generally cannot join Retirement Plus at a later date. See *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2023 WL 5332723 (DALA Aug. 7, 2023).

Mr. Tait’s factual theory on appeal is that he marked his Retirement Plus form “yes”; he maintains that his mentor then intercepted the form and altered it to opt Mr. Tait out. “[T]he petitioner bears the burden to prove, by a preponderance of the evidence, each fact necessary to establish [his or her] claim.” *O’Grady v. State Bd. of Ret.*, No. CR-07-1126, 2012 WL 13406335, at \*2 (CRAB July 10, 2012). That burden is not carried here. Mr. Tait’s proposed account is not only rooted in conjecture but also extraordinary. Few people would conceive of tampering with a colleague’s personal paperwork. Such misconduct would be even more peculiar in the Retirement Plus context, given MTRS’s practice of promptly acknowledging members’ elections; anyone contemplating the subterfuge that Mr. Tait alleges could expect the scheme to surface and fail almost immediately. The record offers no reason to believe that Mr. Tait’s mentor was prone to behavior simultaneously so improper and so bizarre.

It is also unlikely that Mr. Tait would be entitled to relief even on the assumption that the facts unfolded as he theorizes. An “election” within the meaning of the Retirement Plus statute is “a form or other writing delivered to MTRS.” *Fillmore v. Massachusetts Teachers’ Ret. Syst.*,

No. CR-23-358, 2024 WL 277245 (DALA Jan. 5, 2024). *See also* *Desiré v. Massachusetts Teachers' Ret. Syst.*, No. CR-14-200, 2017 WL 6335487, at \*4 (DALA July 7, 2017); 807 C.M.R. § 13.02. A form marked “yes” but delivered to someone other than MTRS is not effective; the Legislature excused some teachers from this rule only during a temporary window inapplicable here. *See* Acts 2004, c. 149, § 397.

Mr. Tait’s theory is that he handed a form marked “yes” to another employee, who caused MTRS to receive a form marked “no.” On these facts, Mr. Tait’s case would be roughly analogous to those of the many individuals who handed forms marked “yes” to other employees, who caused MTRS to receive no forms at all. *See Fillmore, supra* (collecting authorities). *Cf. Schiller v. Metropolitan Life Ins. Co.*, 295 Mass. 169 (1936) (an insurer was entitled to rely on a form altered without the insured’s knowledge).

The bottom line is that Mr. Tait did not successfully cause MTRS to receive a timely form electing into Retirement Plus. There was therefore no error in MTRS’s refusal to enroll him in the program.

### **Conclusion and Order**

MTRS’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate