

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Paula Telesco,**  
Petitioner,

No. CR-24-0313

Dated: February 14, 2025

v.

**State Board of Retirement,**  
Respondent.

**Appearances:**

For Petitioner: Paula Telesco (pro se)

For Respondent: Jennifer Hunt, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner is not entitled to purchase retirement credit for a period of service in an out-of-state school because that service entitled her to an employer-funded retirement benefit.

**DECISION**

Petitioner Paula Telesco appeals from a decision of the State Board of Retirement (board) denying her application to purchase retirement credit for two years of pre-membership work. The appeal was submitted on the papers without objection. I admit into evidence exhibits marked 1-5.

**Findings of Fact**

I find the following facts.

1. Ms. Telesco is a university professor. In the academic years 1989-1990 and 1995-1996, she was employed in Michigan by Wayne State University (Wayne State). In each pay period during those years, both Ms. Telesco and Wayne State paid into a tax-advantaged account under 26 U.S.C. § 403(b) in Ms. Telesco's name. (Exhibits 1-3, 5.)

2. Ms. Telesco has been a Massachusetts public employee since 1996. In September 2022, she presented the board with an application to purchase retirement credit for her work at Wayne State. Letters were then exchanged among Ms. Telesco, the board, Wayne State, and several other entities. In April 2024, the board denied Ms. Telesco's application, and she timely appealed. (Exhibits 2-5.)

### Analysis

The retirement benefits of a Massachusetts public employee are determined in part by the length of the employee's creditable service. *See* G.L. c. 32, § 5(2). The general rule is that each individual is credited with the periods when he or she was an employee of a Massachusetts governmental unit and a member of a Massachusetts retirement system. *See id.* § 4(1)(a).

Various provisions allow employees to purchase credit for service that otherwise would not count. One of them is G.L. c. 32, § 3(4), which relates to certain educators with pre-membership service "in any other state for any previous period as a teacher . . . in the public day schools." A proviso to § 3(4) says: "provided that no credit shall be allowed . . . for any service on account of which the member shall be entitled to receive a retirement allowance . . . from . . . any other source." The purpose of this rule is to "prevent[] members from receiving double retirement benefits for the same work." *Gregoire v. Massachusetts Teachers' Ret. Syst.*, No. CR-16-449, 2021 WL 12298082, at \*2 (Contributory Ret. App. Bd. Mar. 22, 2021).

The board concluded correctly that the proviso to § 3(4) defeats Ms. Telesco's application. The meaning of the phrase "retirement allowance" is not identical across all contexts. *See Moynihan v. Massachusetts Teachers' Ret. Syst.*, CR-16-567, 2021 WL 12297926, at \*2 (Contributory Ret. App. Bd. Apr. 28, 2021). But for purposes of § 3(4), the phrase includes any "defined contribution plan . . . in which a member is eligible to receive, or has received, a benefit based in whole or in part upon employer contributions." 807 C.M.R. § 19.04(2).

This definition covers Ms. Telesco's circumstances. A tax-advantaged § 403(b) account is a retirement-oriented "benefit." *Sullivan v. Massachusetts Teachers' Ret. Syst.*, No. CR-07-639, 2012 WL 13406337, at \*2 (Contributory Ret. App. Bd. Nov. 16, 2012). In Ms. Telesco's case, that benefit was "based . . . in part upon employer contributions." 807 C.M.R. § 19.04(2). And either Ms. Telesco is "eligible to receive" her benefit, or she already "has received" it. *Id.*<sup>1</sup>

Ms. Telesco's final argument is that she received conflicting pieces of guidance from board personnel about § 3(4)'s demands. But a retirement board's statements to a member are not capable of changing the member's statutorily prescribed entitlements. *See Clothier v. Teachers' Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010).

### **Conclusion and Order**

The board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

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<sup>1</sup> It is not necessary to determine how much of her § 403(b) account Ms. Telesco may have already withdrawn, a point on which the record is mixed.