

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Miguel Urena,
Petitioner

v.

Docket No. CR-24-0365
Date: July 26, 2024

State Board of Retirement,
Respondent

Appearance for Petitioner:

Miguel Urena, *pro se*

Appearance for Respondent:

Brendan E. McGough, Esq.
State Board of Retirement
One Winter Street, 8th Floor
Boston, MA 02108-4747

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

Petitioner left state service, took a refund of his funds on account with the retirement system, returned to state service, and re-purchased his prior time. When he returned to state service, he failed to work for the requisite two years to be eligible for a retirement allowance. *See* G.L. c. 32, § 3(6)(e). Despite having 10 years, 2 months creditable service, he is not entitled to a retirement allowance as a matter of law.

DECISION

Petitioner Miguel Urena appeals from a decision of the State Board of Retirement denying his application for superannuation retirement because, when he returned to government service, he did not do so for at least two years. *See* G.L. c. 32, § 3(6)(e). On

July 8, 2024, I ordered the Board to submit a more definite statement of facts that led it to deny Mr. Urena's retirement application. Later that day, rather than file just the statement of facts, the Board filed a motion to dismiss for failure to state a claim upon which relief can be granted, along with five proposed exhibits, which I enter into evidence as marked. (Exhibits 1-5.) On July 10, 2024, Mr. Urena filed his opposition to the Board's motion, along with one additional exhibit, which I enter into evidence as Exhibit 6.

FINDINGS OF FACT

The following facts are not in dispute:

1. Miguel Urena began working for the Massachusetts Department of Public Health on or around January 7, 1993. (Exhibit 1.)
2. Mr. Urena remained in state service until on or around September 1, 2001, accumulating approximately 8 years, 7 months of service credit. (Exhibit 1.)
3. At some point after leaving state service in 2001, Mr. Urena took a refund of his retirement funds on account with the Board. (Exhibits 1, 2.)
4. Mr. Urena returned to state service on or around September 14, 2004. (Exhibits 1, 2.)
5. At some point after returning to state service in 2004, Mr. Urena purchased his previously refunded service. (Exhibits 1, 2.)
6. Mr. Urena left state service on or around April 1, 2006, after he had accumulated a total of approximately 10 years and 2 months of creditable service. He did not return to state service following this date. (Exhibit 1.)

7. On or around September 20, 2023, once he had attained age 55, Mr. Urena applied to the Board for superannuation retirement. (Exhibit 3.)

8. On June 14, 2024, the Board denied the Petitioner's application, citing the two-year rule in G.L. c. 32, § 3(6)(e) as the reason. (Exhibit 4.)

9. On June 18, 2024, Mr. Urena timely appealed the Board's denial. (Exhibit 5.)

CONCLUSION AND ORDER

Mr. Urena worked for the state for approximately 8 years and 7 months before leaving state service and taking a refund. He returned to state service on September 14, 2004. At some point shortly after his 2004 return to state service, Mr. Urena bought back his previously-refunded time from the Board. He worked an additional 1 year and 7 months before leaving state service a second time and has not returned to state service. Mr. Urena presently has approximately 10 years and 2 months of creditable service on account with the Board, which is usually enough to receive a superannuation or termination allowance.¹

G.L. c. 32, § 3(6)(e) states, in relevant part, however:

Anything in sections one to twenty-eight inclusive to the contrary notwithstanding, no person who becomes a member under subdivision (3) of this section, and no member who is reinstated to or who re-enters active service as provided for in paragraph (b), (c) or (d) of this subdivision, or who transfers or re-establishes his membership as provided for in subdivision (8) of this section, shall be eligible to receive a superannuation

¹ See G.L. c. 32, §§ 5(1)(m) (if first employed on or after January 1, 1978, must have at least 10 years of creditable service to qualify for superannuation retirement; otherwise entitled only to a return of accumulated deductions plus interest), 10(2)(b½) (any member who has completed ten or more years of creditable service, and voluntarily terminates his service and leaves his accumulated total deductions in the annuity savings fund of the retirement system, has right to apply for termination allowance upon attaining age 55).

retirement allowance, . . . or a termination retirement allowance unless and until he shall have been in active service for at least two consecutive years, . . . subsequent to the date of commencement of his new employment, or unless, in the case of any member who is reinstated to or who re-enters active service as provided for in paragraph (b) of this subdivision . . . , he was eligible to receive a retirement allowance under the provisions of section ten at the time of his last separation from service

The Petitioner re-entered service under the provisions of G.L. c. 32, § 3(6)(d), which states:

Any former member who . . . re-enters the active service of the governmental unit in which he was formerly employed to serve in a position which is subject to the provision of this chapter, more than two years after the date of his last separation therefrom 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, make-up payments of an amount equal to the accumulated regular deductions withdrawn by him, together with buyback interest.

Having re-entered state service as described in § 3(6)(d), Mr. Urena is subject to the limitations in § 3(6)(e). This means that, when Mr. Urena returned to service in 2004, he needed to remain employed for two consecutive years in order to re-establish his right to a superannuation or termination retirement allowance. It was not enough that Mr. Urena, in his second stint, worked long enough to vest. As he did not complete two consecutive years of state service after he returned in 2004, he is ineligible for superannuation or termination retirement benefits. *See Belsito v. State Bd. of Retirement*, CR-10-735, at *8-9 (DALA April 27, 2012) (member who returned to service for one year and six months not entitled to retirement allowance, even though he had more than ten years of creditable service). The Board's decision was correct.

Mr. Urena's argument boils down to: the Board never alerted me to the two-year active service rule in § 3(6)(e) and I relied on the Board to help me get the largest

retirement allowance I could; therefore, the rule should not be applied to me. I am sympathetic to Mr. Urena's situation. His first stint in state service did not net him the well-known 10 years of service credit required for superannuation retirement, so he came back to state service for a second stint as a full-time employee, staying until he had 10 years and 2 months of service. At this point, he thought he was all set. He left his second stint in 2006 and then, based on information received from the Board, planned to wait until he was 55 years old (approximately 17 years) to file for retirement. He followed through on his plan only to be told by the same Board that he did not qualify for retirement. He credibly claims that if he had known about the two-year rule he would have stayed in state service the additional approximately five months to satisfy the rule. It is easy to see how frustrating this set of events is for Mr. Urena.

Nonetheless, the law is crystal clear that Mr. Urena does not qualify for a retirement allowance right now.² The Board was under no obligation to explain every detail of his retirement eligibility. Those who deal with the government are expected to know the law. *Heckler v. Community Health Services*, 467 U.S. 51, 63-64 (1984). The duty of the retirement board is to not mislead its members, but it has no affirmative fiduciary obligation to inform its members of every potential benefit. *Benoit v. Bristol County Retirement Board*, CR-04-291 (DALA Aug. 1, 2005), aff'd (CRAB March 6, 2006).

To the extent that Mr. Urena's argument rests on general fairness, even if I were convinced that he had been treated unjustly, DALA has no ability to correct unfair results

² It would be possible (although I cannot say how plausible) for Mr. Urena to leave his retirement contributions on account, return to state service for at least two full years, and then qualify for a retirement allowance.

in the absence of statutory authority to do so. *See Bristol County Retirement Bd. v. Contributory Retirement App. Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006); *Petrillo v. Public Employee Retirement Admin.*, CR-92-731, at *1 (CRAB Oct. 22, 1993) (CRAB does not have the “authority to employ an equitable remedy in the face of specific statutory language [to the] contrary.”)

For the above stated reasons, the Board’s decision is affirmed. The Board is directed to return to Mr. Urena the balance of his annuity savings account with interest, if Mr. Urena so desires.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

Dated: July 26, 2024