

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

KATHLEEN YOUNG,

Petitioner-Appellee

v.

BOSTON RETIREMENT SYSTEM,

Respondent-Appellant.

CR-19-0024

DECISION

Respondent Boston Retirement System (BRS) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) allowing Petitioner Kathleen Young to purchase creditable service for a period of time from 1979 to 1983 in which she worked with the Department of Mental Health (DMH) and Department of Mental Retardation (DMR), now known as the Department of Developmental Services (DDS) as a service coordinator. The DALA magistrate granted summary judgment to Ms. Young on the grounds that she was employed by a governmental unit during the time period in question. In doing so, the magistrate admitted seven exhibits into evidence and made three findings of fact, which we adopt as our own. The DALA decision, dated July 10, 2020, is hereby incorporated by reference. We affirm DALA's decision that Ms. Young is eligible to purchase creditable service.

Background. Ms. Young worked as a service coordinator at the DMH/DMR (now the Department of Developmental Services) area office in Plymouth from December 17, 1979 to October 18, 1983. She held an annual contract with the Education Collaborative for Greater Boston, Inc. (EdCo). EdCo paid her and in turn received grants from the 03 subsidiary account of DMH/DMR. She worked with DMH/DMR clients and was supervised by DMH/DMR employees.¹ Her contracts with EdCo indicated that EdCo had

¹ Finding of Fact 1.

the ability to terminate her employment under certain circumstances. However, they do not mention DMH or DMH having this ability.²

Ms. Young began working as a service coordinator for Boston Public Schools in 2001 and is a member of the Boston Retirement System. She applied to purchase her service from 1979-83 and BRS determined that she was ineligible to purchase this service. Ms. Young timely appealed, and DALA issued summary judgment for her.³

Educational Collaboratives as Public Entities.

CRAB and DALA have held that educational collaboratives are public employers for the purpose of creditable service purchases under § 3(5). The Legislature formally designated educational collaboratives as public employers in 1985. G.L. c. 40 § 4E. In *Gomes v. CRAB*, the Superior Court determined that employees of programs administered by governmental units such as cities and towns are employees of governmental units and are thus eligible to purchase creditable service. In *Sowden v. Norfolk*, DALA found that because educational collaboratives are formed by cities and towns to provide services to the whole group of participating bodies, their employees are public employees for periods before and after the language change that occurred in 1985.

This history indicates that if Ms. Young is an employee of EdCo, then she is considered an employee of a public entity for the purpose of the purchase of creditable service. The State Retirement Board does not argue that educational collaboratives before 1985 should not be considered public employers. Thus, our inquiry must center on whether DALA properly classified Ms. Young as an EdCo employee.

Purchase of Creditable Service and 03 Employees:

Chapter 32 § 3(5) governs the purchase of prior non-membership service by state employees. Employees may purchase service that they rendered as an employee of any governmental unit other than the one in which they are presently employed. The retirement statute defines “employee” as “any person who is regularly employed in the service of any such political subdivision . . . excluding any person whose compensation for service rendered to the commonwealth is derived from the subsidiary account 03 of the appropriation of any department, agency, board, or commission of the commonwealth.” G.L. c. 32 § 1. As a result, individuals who are paid directly out of 03 subsidiary accounts are precluded from being considered employees of the entity compensating them and are ineligible to purchase creditable service

² Exhibit 4.

³ Finding of Fact #3, DALA decision dated 7/10/2020.

for years during which they were compensated from these accounts. *See, e.g., Augostino v. MWRA Ret. Bd.*, CR-03-208 (CRAB 2004), *Young v. State Bd. of Ret.*, CR-10-789 (DALA 2016); *Stergis v. Mass. Teachers' Ret. System*, CR-07-156 (DALA 2011). Being a contract employee without "03" status does not preclude an employment relationship. Chapter 32 defines "employee" as an individual who is "regularly employed." While the statute does not define regular employment, the Supreme Judicial Court has held that the term "refers to continuous employment as distinguished from sporadic, intermittent, or temporary employment." *Concord v. Colleran*, 34 Mass. App. Ct. 486, 489 (1993). An employment contract subject to consistent annual renewal meets this criterion. *See, e.g., Young v. State Bd. Of Ret.*, CR-10-789 (DALA 2016).

CRAB has not yet determined whether an individual employed by one public entity, but whose compensation ultimately derives from the 03 account of a different public entity, can be considered an employee of the first public entity. Such a relationship is possible under the narrow circumstances presented by this case. The evidence in the record indicates that Ms. Young was an employee of EdCo. Her compensation was paid by EdCo directly, and it appears that EdCo was reimbursed out of a subsidiary 03 account for DMH/DMR.⁴ We find this situation analogous to one in which an organization receives reimbursement for staff expenses by any other method such as an earmark in the state budget or grant funding.

In this case, the source of funding to EdCo does not automatically recategorize an arrangement that otherwise constitutes an employer-employee relationship. Ms. Young's relationship with EdCo appears to be one of actual employment. Her contract was with EdCo, she was paid by EdCo, and her contract indicates that EdCo had hiring and firing power.⁵ No evidence was presented to suggest that DMH/DMR had input into her selection for the position or the power to terminate her employment. DMH/DMR was responsible for paying EdCo for services rendered by EdCo employees and supervising those employees on their premises, but it appears that the ultimate employment relationship was between Ms. Young and EdCo, not DMH/DMR. As a result, the original source of the funds by which Ms. Young was paid does not preclude her from being considered an employee of the public entity that actually employed and paid her. We note that cases where funding originating in an 03 account makes its way to the retiree through another employer appear to be exceedingly rare. We do not hold that all employees whose funding originates in an 03 account should be considered employees of a pass-through agency. In

⁴ Finding of Fact #1; Exhibit 4.

⁵ *Id.*

the rare event that cases like this arise, the state should conduct a careful analysis of the retiree's actual relationship with all alleged employers.

Conclusion

We affirm the DALA decisions for the reasons set forth above. Ms. Young is entitled to purchase creditable service for her time as an employee of EdCo.

SO ORDERED.

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