COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

**William Adams,**

Petitioner

v. Docket No.: CR-16-90

Date Issued: Oct. 12, 2018

**Teachers’ Retirement System**,

Respondent

**Appearance for Petitioner:**

 *Pro se*

 22 Waddell St.

 Medford, MA 02155

**Appearance for Respondent:**

 Salvatore Coco, Esq.

 Massachusetts Teachers’ Retirement System

 500 Rutherford Ave., Suite 210

 Charlestown, MA 02129-1628

**Administrative Magistrate:**

 **Kenneth J. Forton, Esq.**

**SUMMARY OF DECISION**

The Massachusetts Teachers’ Retirement System’s decision denying the Petitioner’s request for payment of interest on his refund of excess retirement deductions is affirmed because G.L. c. 32, § 20(5)(c)(2) does not provide for interest to correct errors in retirement contributions. *See Hollstein v. Contributory Retirement Appeal Bd.*, 47 Mass. App. Ct. 109, 111 (1999); *Saunders v. Beverly Retirement Bd*., CR-15-488, at \*6-7 (DALA Feb. 16, 2018).

**DECISION**

 Petitioner William Adams appeals, under G.L. c. 32, § 16(4), the March 1, 2016, decision of Respondent Massachusetts Teachers’ Retirement System denying his request to be paid interest on the refund of his excess retirement deductions. On December 8, 2017, DALA ordered the parties to submit pre-hearing memoranda. The Petitioner filed his argument and supporting documents on December 27, 2017. The Respondent filed its argument and supporting documents on February 26, 2018. On August 2, 2018, DALA informed the parties that the matter would be decided on the papers because neither party stated that it would call any witnesses. Neither party objected.

From the record and the documents submitted, I enter the following exhibits into evidence:

Ex. 1: Letter from MTRS to Mr. Adams denying his request to be paid interest on the excess contributions he made to MTRS and explaining that MTRS does not have the discretion or statutory authority to grant his request, with appeal rights;

Ex. 2: Letter from Mr. Adams to DALA appealing the MTRS decision, dated March 3, 2016;

Ex. 3: Mr. Adams’s 2014 Statement of Annuity Savings Account from MTRS;

Ex. 4: Letter from Mr. Adams to MTRS, requesting that interest be included on his refund for excess retirement contributions, dated January 17, 2016;

Ex. 5: Email correspondence between Elizabeth Lyons, of the Revere Public Schools Payroll Department, and Kathleen Kreatz, of MTRS, as well as between Mr. Adams and Ms. Lyons, regarding the error in Mr. Adams’s retirement contributions from August 31, 1995 – May 31, 2015, dated June 11, 2015;

Ex. 6: Letter from Christopher Hawes, MTRS, to Mr. Adams containing the receipt for his creditable service payment, dated March 17, 2016; and

Ex. 7: Letter from Mr. Adams to the Revere Public School Department seeking the correction of, and remedy for, a suspected error in the retirement contributions he made while he taught in Revere, dated May 23, 2015.

**FINDINGS OF FACT**

Based on the record evidence, I make the following findings of fact:

1. William Adams taught in the Revere School Department from September 1995 to May 2015. (Ex. 4.)
2. By letter dated, May 23, 2015, Mr. Adams informed the Revere School Department that he believed the Department had been taking too much in retirement deductions from his pay, at a rate of 7% plus 2%, starting in 1995. He believed the correct rate was 7% because he started teaching in 1977 when the rate was 7%, and he had always kept his retirement contributions on account with MTRS. (Ex. 7.)
3. After review, MTRS concluded that Mr. Adams’s retirement contributions had been incorrectly deducted by the Revere School District at a rate of 7% plus 2%, instead of 7%, and deposited into his MTRS account from August 31, 1995 to May 31, 2015. (Exs. 1, 5.)
4. In May 2015, Mr. Adams received a refund of his excess deductions in the amount of $14,739.73. The refund did not include interest. (Exs. 1, 4.)
5. On January 17, 2016, Mr. Adams asked MTRS to pay him interest on the refund. (Ex. 4.)
6. On March 1, 2016, MTRS denied Mr. Adams’s request, stating that Chapter 32 does not authorize MTRS to pay interest on deduction withholding errors. (Ex. 1.)
7. On March 3, 2016, Mr. Adams appealed MTRS’s decision. (Ex. 2.)

**CONCLUSION AND ORDER**

MTRS correctly decided that Mr. Adams was entitled to a refund of his excess retirement contributions without interest.

In June 2015, MTRS determined that Mr. Adams’s employer had deducted more retirement deductions than it should have and that he was due a refund of the excess deductions. Mr. Adams was still a member in service when he received his refund. The Board did not pay him interest on the refund. Mr. Adams contends that his refund should include interest.

 G.L. c. 32, § 20(5)(c)(2) provides that retirement boards must correct errors in their records.

When an error exists in the records maintained by the system or an error is made in computing a benefit and, as a result, a member or beneficiary receives from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct or had the error not been made, the records or error shall be corrected . . . as far as practicable, and future payments shall be adjusted so that the actuarial equivalent of the pension or benefit to which the member or beneficiary was correctly entitled shall be paid. If it is determined that a member has contributed an incorrect amount to the retirement system, the member shall be required to contribute an amount sufficient to correct such error or the board shall pay an amount to the member to correct such error, as the case may be.

G.L. c. 32, § 20(5)(c)(2). There is no dispute that § 20(5)(c)(2) requires retirement boards to refund excess retirement deductions. *Hollstein v. CRAB*, 47 Mass. App. Ct. 109, 110 (1999). But, as I ruled in *Saunders v. Beverly Retirement Bd*., CR-15-488, at \*6-7 (DALA Feb. 16, 2018), the Board is not authorized to pay interest on refunds of excess retirement deductions.

 The first sentence of G.L. c. 32, § 20(5)(c)(2) addresses errors that effect retirement benefits already being received by inactive retired members, and the second sentence addresses errors in retirement deductions that occur before retirement. The Appeals Court has held that section 20(5)(c) authorizes refunds with interest only in instances in which the board’s error affected retirement benefits already being received by members. *Hollstein v. Contributory Retirement Appeal Bd.*, 47 Mass. App. Ct. 109, 111 (1999). The Court concluded that “[a] requirement to pay interest on excessive pension *deductions* should not be read into the statute where the Legislature did not provide for it.” (Emphasis added.) *Id.* Had the Legislature intended an actuarial equivalent to be paid for errors in contributions, as well as benefit calculations, it would have specifically provided for interest in the second sentence. *Lydon v. Quincy Retirement Bd.*, CR-16-479, at \*8-9 (DALA 2017); *see also Reade v. Secretary of the Commonwealth*, 472 Mass. 573, 583 (2015) (“As a general rule, when the Legislature has employed specific language in one part of a statute, but not in another part which deals with the same topic, the earlier language should not be implied where it is not present.”) Thus, in instances where a retirement board corrects errors in retirement deductions, it is not required to pay interest.

Although the Supreme Judicial Court, in *Herrick v. Essex Regional Retirement Bd.*, 465 Mass. 801, 808-09 (2013), held that interest was required, at a rate determined by PERAC, for a retroactive payment of benefits when a retirement board makes a legal error in denying retirement benefits, that holding is not applicable to this case. Unlike Mr. Adams’s case, the board in *Herrick* had denied the petitioner’s retirement application. *See id.* at 802. The Court determined that Mr. Herrick was owed retirement payments retroactive to his resignation, *id.* at 803, and held

[u]nder the plain meaning of [G.L. c 32, § 20(5)(c)(2)], where a retired public employee receives a lesser amount of *retirement benefits* because of a record-keeping or computational error made by a retirement board, the retiree, once the error is discovered, shall receive the actuarial equivalent of the pension to which he is correctly entitled.

(Emphasis added.) *Id*. at 808. The Court in *Herrick* interpreted the statute as requiring interest for lump sum retroactive pension payments. *See id.* The Appeals Court’s holding in *Hollstein*, which determined that the Board is not required to pay interest to correct contribution errors, does not contradict *Herrick*, as *Herrick* addresses only corrections to retirement benefits after retirement. It is *Hollstein*, not *Herrick*, that applies in this case.

 For the above-stated reasons, I conclude that because Mr. Adams was still a member in service when he received a refund of excess retirement contributions, MTRS correctly did not pay him interest on the refund. Accordingly, MTRS’s decision is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Kenneth J. Forton, Esq.

Administrative Magistrate

DATED: Oct. 12, 2018