

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Anthony Bernier,
Petitioner,

No. CR-24-0715

Dated: February 7, 2025

v.

State Board of Retirement,
Respondent.

ORDER OF DISMISSAL

Petitioner Anthony Bernier appeals from a decision of the State Board of Retirement (board) denying his application to purchase retirement credit for a period of military service. *See* G.L. c. 32, § 4(1)(h).

The board denied Mr. Bernier’s application on the basis that his service was “active duty for training.” That type of service has been held to land outside the scope of § 4(1)(h). *See Scortino v. Massachusetts Teachers’ Ret. Syst.*, No. CR-00-897 (Contributory Ret. App. Bd. July 31, 2002); *Nietupski v. State Bd. of Ret.*, No. CR-97-1690 (Contributory Ret. App. Bd. May 2, 2000). *See also Flemings v. Contributory Ret. Appeal Bd.*, 431 Mass. 374, 376 n.3 (2000).

A prior order directed Mr. Bernier to show cause why his appeal should not be dismissed for failure to state a claim. *See* 801 C.M.R. § 1.01(7)(g)(3). In response, Mr. Bernier did not deny the facts stated by the board. He sought and obtained additional time to locate legal authority in support of his application. He has not made the follow-up submission he reportedly anticipated. Regardless, the holding of *Scortino* and other pertinent cases is clear. Under that holding, the matters pleaded by Mr. Bernier, taken as true, would not entitle him to relief.

In view of the foregoing, it is hereby ORDERED that this appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate