

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Lucia Casey,
Petitioner,

No. CR-21-351

Dated: September 1, 2023

v.

Bristol County Retirement System,
Respondent.

Appearance for Petitioner:

Lucia Casey (pro se)
Somerset, MA 02726

Appearance for Respondent:

Michael Sacco, Esq.
Westfield, MA 01085

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

In 2002, the petitioner's retirement board permitted her to purchase a period of creditable service for retirement purposes. In 2021, the board changed its mind, "corrected" its records under G.L. c. 32, § 20(5)(c)(2), and reduced the petitioner's creditable service accordingly. But the petitioner's original purchase remains supported by precedents that have not been overruled. The board therefore was not presented with any "error" warranting correction.

DECISION

Petitioner Lucia Casey appeals from a decision of the Bristol County Retirement Board (board) reducing her creditable service for retirement purposes. The appeal was submitted on the papers under 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-6.

Findings of Fact

I find the following facts:

1. Ms. Casey was elected Town Moderator of the Town of Somerset in May 1981. She was reelected to successive terms concluding in May 1990. (Exhibit 2.)

2. The retirement system that pertains to the Town of Somerset is the respondent (BCRS). Throughout Ms. Casey's period of elected service, she did not apply for BCRS membership. (Exhibit 1.)

3. In February 2002, Ms. Casey accepted a position with the Town of Somerset Housing Authority. She then became a BCRS member. (Exhibit 1.)

4. In early October 2002, the board permitted Ms. Casey to purchase credit for her entire period of pre-membership elected service. She completed her purchase later that month. (Exhibit 3.)

5. In September 2021, the board notified Ms. Casey that it had erred by allowing her to make her credit purchase of 2002. The board announced that, to correct that error, it would reduce Ms. Casey's credited service time and issue a corresponding refund. Ms. Casey timely appealed. (Exhibits 5, 6.)

Analysis

This appeal is governed by the analysis stated in *McGarry v. Bristol Cty. Ret. Bd.*, No. CR-20-409, 2023 WL 3614628 (DALA Jan. 27, 2023). A paraphrasing of that analysis follows.

A public employee's creditable service is an important input into the computation of his or her retirement allowance. As a rule, employees receive credit only for periods of work during which they were members of pertinent retirement systems. G.L. c. 32, § 4(1)(a). Ms. Casey was not a member of BCRS during the period at issue.

In specified circumstances, employees may "purchase" credit for otherwise-noncountable service. Today, employees cannot purchase credit for pre-membership stints as elected officials. *See Awad v. Hampshire Cty. Ret. Bd.*, No. CR-08-621, at *6 (CRAB Dec. 19, 2014). This holding results from the statutory rule that an elected official who wishes to join the pertinent retirement system must apply to do so "within ninety days after . . . assuming office." G.L. c. 32,

§ 3(2)(a)(vi). That rule would be frustrated “[i]f creditable service for work as an elected official could be purchased later.” *Awad, supra*, at *6.

Matters were more complicated in 2002, when Ms. Casey made her purchase. Until 2009, the retirement law’s § 4(1)(a) included the language emphasized below:

Any member in service shall . . . be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto; *provided, that he shall be credited with a year of creditable service for each calendar year during which he served as an elected official*

A series of DALA and CRAB decisions support the view that this language “allows members who had served as elected officials . . . to receive creditable service for their prior service.”

Sauvageau v. Worcester Reg’l Ret. Bd., No. CR-02-1336 (DALA Dec. 12, 2003). *See Levesque v. Essex Cty. Ret. Bd.*, No. CR-95-571, at *3 (CRAB Oct. 7, 1996); *Colt v. Essex Ret. Bd.*, No. CR-95-629, at *2 (CRAB Oct. 7, 1996); *Goode v. Weymouth Ret. Bd.*, No. CR-99-701, at *2 (CRAB May 1, 2001); *Turner v. Northbridge Ret. Bd.*, No. CR-00-298 (CRAB Jan. 14, 2002); *Calabrese v. Hampden Cty. Reg’l Ret. Bd.*, No. CR-08-329, 2010 WL 676236, at *2, 3, 5 (DALA Jan. 8, 2010).

CRAB acknowledged this line of cases in a footnote to *Awad*, writing:

We note that both *Levesque* and *Goode* contained [a] dictum to the effect that G.L. c. 32, § 4(1)(a), as it existed prior to its 2009 amendments, allowed purchase by members of a retirement system of their prior service as elected officials The former version of § 4(1)(a) contained a proviso that arguably was so specific as to allow such credit despite the ninety-day limitation This dictum was applied by DALA in [*Sauvageau*]. We do not reach this issue since it is not presented here

Awad, supra, at *6 n.10. Fairly read, this footnote stops short of determining whether the boards in cases such as *Sauvageau* and the instant appeal were right or wrong to allow the members’ purchases. CRAB saw no need to “reach this issue” in *Awad*. It neither endorsed nor overruled *Sauvageau*. It called its own prior statements in *Levesque* and *Goode* “dictum,” but did not

disavow them. It acknowledged that the now-defunct portion of § 4(1)(a) was “arguably . . . so specific as to allow” the type of purchase at issue.¹

The decisive question is whether, against this backdrop, the board’s original authorization of Ms. Casey’s credit purchase was an “error” subject to correction under G.L. c. 32, § 20(5)(c)(2). *McGarry*’s answer is no.²

That answer draws on the goals and values that underlie the retirement boards’ authority to correct errors. That authority helps the boards to administer the retirement laws correctly and uniformly. In some situations, it protects the retirement system’s finances. In others, it rescues members from losing out on benefits “because of . . . honest error[s] which can readily and fairly be corrected.” *McCormick*, 345 Mass. at 698. See *Herrick v. Essex Reg’l Ret. Bd.*, 465 Mass. 801, 808 (2013); *Hollstein v. Contributory Ret. Appeal Bd.*, 47 Mass. App. Ct. 109, 111 (1999). But unless the power to correct errors is wielded with caution, it also may produce “extraordinary hardship[s].” *Worcester Reg’l Ret. Bd. v. Public Employee Ret. Admin. Comm’n (Vernava II)*, 489 Mass. 94, 105 (2022).

The public retirement statute aspires to leave long-serving public employees in sound financial shape during their most vulnerable years. Our legal system more generally pursues fairness and disfavors suffering. The Legislature did not enact § 20(5)(c)(2) in the hopes that, on

¹ If CRAB *had* concluded in *Awad* that *Sauvageau* and its predecessors had misread the old version of § 4(1)(a), that conclusion would have rested on solid ground. It appears that the pertinent portion of § 4(1)(a) originally intended to provide a formula for computing the credit earned by officials working less than year-round. See *Rockett v. State Bd. of Ret.*, 77 Mass. App. Ct. 434, 441 (2010).

² The board relies primarily on two earlier DALA decisions. In one of them, by the time the member made his credit purchase, the pre-2009 portion of § 4(1)(a) was no longer effective. *Gallagher v. Bristol Cty. Ret. Bd.*, No. CR-20-135 (DALA June 30, 2022). In the other, the petitioner apparently did not rely on the pre-2009 portion of § 4(1)(a) or the *Sauvageau* line of cases. *Howland v. Bristol Cty. Ret. Bd.*, No. CR-18-612 (DALA Oct. 22, 2021).

the eve of retirement, public employees could be deprived of benefits acquired in good faith many years prior. The only types of “errors” that the retirement law could possibly view as a justification for late-breaking, member-prejudicing adjustments are clear and certain mistakes, not misgivings or question marks. See *Vernava II*, 489 Mass. at 105 & n.15; *McGarry*, 2023 WL 3614628, at *4-5.

Ms. Casey’s original credit purchase remains supported by *Sauvageau* and a string of other authorities. The board believes that *Awad* foretells the demise of those cases, but that remains a prediction. The possibility that an appellate tribunal may soon adopt a new rule does not mean that “an error exists” or “an error [has been] made.” G.L. c. 32, § 20(5)(c)(2). No “correction” is called for where the foundations supporting a member’s benefits remain in place, even if they are showing cracks.³

Conclusion and Order

For the foregoing reasons, Ms. Casey’s case did not present the board with an error warranting correction under G.L. c. 32, § 20(5)(c)(2). The board’s decision is therefore VACATED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

³ In cases such as this one, it may be tempting to analyze and determine on appeal whether the board speculated correctly that it is time for the case law to take a new turn. But as a practical matter, that approach would demolish the distinction between true errors, which must be corrected, and speculative non-errors, which must remain undisturbed.