

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

BRIAN DOME	:	Docket No. CR-22-0007
<i>Petitioner</i>	:	
	:	Date: September 29, 2023
v.	:	
	:	
MIDDLESEX COUNTY	:	
RETIREMENT SYSTEM,	:	
<i>Respondent</i>	:	

Appearance for Petitioner:

Brian Dome, *pro se*

Appearance for Respondent:

Thomas Gibson, *Esq.*

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

In 2019, the Middlesex County Retirement System permitted the Petitioner to purchase his prior call firefighter service. In 2022, the Board reduced the Petitioner’s creditable service because he had not earned more than \$5,000 for any of the years in which he sought credit. *See* G.L. c. 32, § 4(1)(o). The Board’s grant of credit in 2019 was an error the retirement statute requires it to fix, G.L. c. 32, § 20(5)(c)(2), even if it meant reducing a considerable amount of credit the Petitioner expected to receive.

DECISION

Petitioner, Brian Dome, timely appeals from a decision of the Middlesex County Retirement System (“MCRS”) reversing the five years of creditable service for his work as a call firefighter. The appeal was submitted on the papers under 801 Code Mass. Regs. § 1.01(10)(c). I admit into evidence exhibits marked 1-6 and A-C.

FINDINGS OF FACT

Based upon the exhibits, I make the following findings of fact:

1. Petitioner became a member of the MCRS on July 18, 2018, when he was hired as a permanent firefighter for the Town of Hudson. (Ex. 1.)
2. Before that, he was a call firefighter for the Town of Hudson starting in 2013. (Ex. 2.)
3. As a call firefighter, Petitioner’s annual pay never reached \$5,000.00. (Ex. 2.)
4. In 2019, MCRS granted the Petitioner five years of creditable service under G.L. c. 32, § 4(2)(b). Petitioner paid \$649.79 to purchase this creditable service. (Exs. 3 & 4.)
5. However, in 2022, MCRS advised the Petitioner that his call fire fighter service credit was being reversed and Petitioner would be refunded the \$649.79. (Ex. 5.)
6. MCRS took these actions in response to a series of Public Employee Retirement Administration Commission (“PERAC”) memoranda, which themselves were in response to the Supreme Judicial Court decision in *Plymouth Ret. Bd. vs. CRAB*, 483 Mass. 600 (2019). (Exs. B-C.)
7. The memoranda instructed retirement boards to identify previously granted service that did not reach the \$5,000.00 threshold, remove such credited service, and then return the contributions for the now uncredited service without interest. (Ex. B.)

DISCUSSION

The retirement allowance of a Massachusetts public employee is based in part on the duration of the employee’s “creditable service.” G.L. c. 32, § 5(2). Normally, creditable service spans the employee’s work for government units beginning when they became a member of a retirement system. G.L. c. 32, § 4(1)(a). In some cases, the employee is entitled to purchase previous service that was not originally treated as creditable service. *See* G.L. c. 32, § 4.

Certain types of prior service are entitled to an “enhanced credit.” *See Shailor v. Bristol Cty. Ret. Bd.*, CR-20-0343, 2023 WL 2535786 (DALA Mar. 10, 2023); G.L. c. 32, § 4(2)(b). For some call firefighters “the [retirement] board shall credit as full-time service not to exceed a maximum of five years that period of time during which [he] was on his respective list and was eligible for assignment to duty subsequent to his appointment[.]” *Id.* Prior to July 1, 2009, it did not matter if the call firefighter was ever even called to act, as long as the call firefighter was on the list. *See Grimes v. Malden Ret. Bd.*, CR-15-005 (CRAB Nov. 18, 2016). However, the Legislature amended the statute so that, after July 1, 2009, a member seeking credit for call firefighter service must have received compensation of more than \$5,000.00 in any year the member seeks this credit. *See* G.L. c. 32, § 4(1)(o); *See Plymouth Ret. Bd. v. CRAB*, 483 Mass. 600 (2019) (noting that § 4(1)(o) applies to call firefighter service granted under G.L. c. 32, § 4(2)(b)).¹

Following the *Plymouth* decision, PERAC released a memo which explained the implications the \$5,000.00 minimum pay requirement to § 4(2)(b) credit for call firefighters. MCERS followed the directive of PERAC to identify individuals who received creditable service under Section 4(2)(b) and determine if they qualified for that service. “[T]he memoranda issued by PERAC to the retirement boards are binding on the boards.” *Grimes*, at *13. Because of this, the five years of creditable service that the Petitioner received was removed since he had never earned over \$5,000 in any year as a call firefighter.

¹ The other prerequisite, not at issue here, is that the call firefighters must have been “subsequently appointed permanent members of the fire department.” *See* G.L. c. 32, § 4(2)(b). However, a town may waive that requirement by regulation. *See* G.L. c. 32, § 4(2)(b ½). That appears to have happened here.

The Petitioner does not dispute these facts; instead, he generally argues that the Board's actions are unfair and insulting. I do not doubt the Board's actions negatively impacted the Petitioner, especially coming so long after the Board had granted him credit. However, the Board is required to correct these mistakes. *See* G.L. c. 32, § 20(5)(c)(2); *McMorrow*; *Howland*; *Correia*. In denying relief, DALA is bound by the statute as written. *See McMorrow*, citing *Bristol County Ret. Bd. v. CRAB*, 65 Mass. App. Ct. 443, 451-52 (2006) (DALA lacks the power to create equitable remedies).

CONCLUSION AND ORDER

Accordingly, MCRS's decision reducing Petitioner's credit for his prior service as a call firefighter is **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate