

COMMONWEALTH OF MASSACHUSETTS  
Division of Administrative Law Appeals

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MARK EXARHOPOULOS,  
*Petitioner*

v.

MIDDLESEX COUNTY  
RETIREMENT SYSTEM &  
PERAC,<sup>1</sup>  
*Respondents*

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Docket No. CR-21-0211

Date: September 29, 2023

**Appearance for Petitioner:**

Marc Exarhopoulos, *pro se*

**Appearance for Respondents:**

Thomas Gibson, *Esq.*  
Middlesex County Retirement Board

Katherine Bensel, *Esq.*  
Public Employee Retirement Administration Commission

**Administrative Magistrate:**

Eric Tennen

**SUMMARY OF DECISION**

In 2012, the Middlesex County Retirement System permitted the Petitioner to purchase his prior call firefighter service. In 2021, 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 2012 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.

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<sup>1</sup> PERAC was added as a necessary party.

**DECISION**

Petitioner, Marc Exarhopoulos, timely appeals from a decision of the Middlesex County Retirement System (“MCRS”) reducing his creditable service as a call firefighter from 4 years, 9 months, and 20 days to 2 years, 1 month, and 7 days. The appeal was submitted on the papers under 801 Code Mass. Regs. § 1.01(10)(c). I admit into evidence exhibits marked 1-7 and A-C.

**FINDINGS OF FACT**

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

1. The Petitioner became a member of the MCRS on March 13, 2012 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 2007. (Ex 2.)
3. From February 8, 2009 through November 9, 2009, Petitioner was a contributing member of the State Board of Retirement. (Ex. 5.)
4. The Petitioner’s payroll as a call firefighter never reached \$5,000.00 in any given year. (Ex. 3.)
5. In 2012, MCRS granted the Petitioner 4 years, 9 months, and 20 days of creditable service for his call firefighter service under G.L. c. 32, § 4(2)(b). (Ex. 2.)
6. In 2014, pursuant to a Public Employee Retirement Administration Commission (“PERAC”) mandate, MCRS collected retirement contributions for Petitioner’s call firefighter service in the amount of \$512.79 (\$497.75 base and \$15.03 interest). (Ex. 4.)
7. However, in 2021, MCRS advised the Petitioner that his call firefighter service credit was being adjusted down to 2 years, 1 month, and 7 days. MCRS stated two reasons for this reduction:
  - His earnings after June 30, 2009 did not exceed the \$5,000.00 annual threshold required to qualify for creditable service; and

- He was not allowed double credit for the period in which the Petitioner was a member of the State Board of Retirement.

(Ex. 6.)

8. In addition to the reduced creditable time, the letter informed the Petitioner that he would be refunded \$298.51 for overpayment of contributions. (Ex. 6.)
9. MCRS took these actions in response to a series of 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.)
10. 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 non-qualifying 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)).<sup>2</sup>

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. MCRS 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 Petitioner’s creditable service was reduced from 4 years, 9 months, and 20 days to 2 years, 1 month, and 7 days. This new amount of creditable service was determined by subtracting the time he served after July 1, 2009, since he did not earn over \$5,000.00 in any given year for his call firefighter service. Additionally, his call firefighter service credit during 2009 for the period that he was both a call firefighter and a member of the State Retirement Board was also reduced.<sup>3</sup>

The Petitioner does not dispute these facts; instead, he generally argues that he provided high level service, the Board’s actions are ethically wrong and insulting, it is causing him an undue hardship, and he should not be penalized for the Board’s mistake. I do not doubt the

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<sup>2</sup> 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.

<sup>3</sup> The Petitioner still received credit during this period through his membership with the State Retirement Board.

Board's actions negatively impacted the Petitioner, especially coming so long after the Board had granted him credit. Nor do I doubt he performed high level service. 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*

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Eric Tennen  
Administrative Magistrate