

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

JASON GALOFARO	:	Docket No. CR-21-0207
<i>Petitioner</i>	:	
	:	Date: September 29, 2023
v.	:	
	:	
MIDDLESEX COUNTY	:	
RETIREMENT SYSTEM &	:	
PERAC, ¹	:	
<i>Respondents</i>	:	

Appearance for Petitioner:

Jason Galofaro, *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 2015, the Middlesex County Retirement System permitted the Petitioner to purchase his prior call firefighter service. In 2021, the board invalidated the purchase and consequently 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 2015 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.

¹ PERAC was added as a necessary party.

DECISION

Petitioner, Jason Galofaro, timely appeals from a decision of the Middlesex County Retirement System (“MCRS”) reducing his creditable service as a call firefighter from 5 years to 1 year, 6 months, and 27 days. The appeal was submitted on the papers under 801 Code Mass. Regs. § 1.01(10)(c). I admit into evidence exhibits marked 1-5 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 in 2014 when he was hired as a firefighter for the town of Boxborough. (Ex. 1.)
2. Before that, he was a call firefighter in various other towns between June 2, 2009 and July 27, 2014. (Ex. 2.)
3. From June 2, 2009 through July 27, 2014, the Petitioner worked as a call firefighter in the town of Stow. (Ex. 3.)
4. From 2012 through July 27, 2014, the Petitioner worked as a call firefighter with the town of Hudson. (Ex. 3.)
5. From 2011 through July 27, 2014, the Petitioner worked as a call firefighter with the town of Berlin. (Ex. 3.)
6. As a call fire fighter, the Petitioner’s combined wages exceeded \$5,000.00 only in 2012. (Ex. 3.)
7. In 2015, MCRS granted the Petitioner five years of creditable service for his call firefighter service under G.L. c. 32, §§ 4(2)(b) and 4(2)(b ½). He paid \$799.20 to purchase this creditable service. (Ex. 2.)
8. However, in 2021, MCRS advised the Petitioner that his service credit was being adjusted down to 1 year, 6 months and 27 days. This service consisted of six months for

2009, a year for service in 2012, and 27 days for the remainder on a day-by-day basis.

(Ex. 4.)

9. In addition to the reduced creditable time, the letter informed the Petitioner that he would be receiving a refund of \$77.26 for overpayment. (Ex. 4.)
10. 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.)
11. The memoranda instructed retirement boards to identify previously granted service that did not reach the \$5,000.00 threshold and remove such credited service; Boards should then return any and all 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)).²

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 creditable service that the Petitioner received as a call firefighter was reduced from 5 years of service to 1 year, 6 months and 27 days. This new amount of creditable service was determined by adding the time he served prior to July 1, 2009 (six months), as well as a full year of credit for each year he earned over \$5,000.00 after July 1, 2009, and day-for-day credit for any service outside of these two criteria.

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 Board’s actions negatively impacted the Petitioner, especially coming so long after the Board

² 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.

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

Eric Tennen
Administrative Magistrate