

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Suzanne Garcia
Petitioner,

No. CR-21-0085

v.

Dated: July 14, 2023

State Board of Retirement
Respondent.

Appearance for Petitioner:
Suzanne Garcia (*pro se*)

Appearance for Respondent:
Melinda E. Troy, Esq.
Boston, MA 02108

Administrative Magistrate:
John G. Wheatley

SUMMARY OF DECISION

The petitioner is not entitled to pro-rated benefits based on the percentage of years of service she rendered in different positions as an employee of the Department of Correction and the group classification of those positions because she was not an active member of a public retirement system on April 2, 2012, and she had entered service prior to that date. The State Board of Retirement's decision to deny her request to pro-rate her service based on the group classification of her positions at the Department of Correction is therefore affirmed.

DECISION

The petitioner, Suzanne Garcia, appeals the decision of the State Board of Retirement denying her request to pro-rate her service based on the group classification of her positions at the Department of Correction. On July 21, 2022, a DALA magistrate advised the parties that the case could be resolved on written submissions under 801 Code Mass. Regs. § 1.01(10)(b) and ordered both parties to file a memorandum of law and any exhibits to be considered in evidence. I have marked the Board's memorandum as brief A and Ms. Garcia's memorandum as brief B.

The parties submitted 15 documents as exhibits (Exhibits 1-15), and I admit those exhibits into evidence.

Findings of Fact

Based on the evidence presented by the parties, I make the following findings of fact:

1. On January 1, 1989, Ms. Garcia entered service with the Massachusetts Department of Correction as a “Correctional Program Officer A/B” at MCI Framingham. She became a member of the Massachusetts State Employees’ Retirement System (MSERS) at that time. (Exhibits 1, 2, 10.)
2. On May 15, 1995, Ms. Garcia was promoted to the position of “Correctional Program Officer C” at the South Middlesex Correctional Center. (Exhibits 1, 10.)
3. On April 17, 2004, Ms. Garcia resigned from her position with the Department of Corrections. (Exhibits 1, 9.)
4. On May 31, 2009, the Department of Corrections rehired Ms. Garcia to her former position at the South Middlesex Correctional Center. (Exhibits 1, 10.)
5. Ms. Garcia worked sporadically from May 31, 2009, until she resigned on July 29, 2010, due to medical/health related reasons and to care for her children. (Exhibits 1, 9, 10.)
6. On January 6, 2014, Ms. Garcia was hired by the Framingham Housing Authority and she became a member of the Framingham Retirement System. (Exhibits 3, 15.)
7. On January 24, 2015, the State Board of Retirement transferred Ms. Garcia’s retirement contributions to the Framingham Contributory Retirement Board (“Framingham Board”). (Exhibit 2.)
8. On September 9, 2019, the Framingham Board requested the State Board of Retirement to provide the group classification for Ms. Garcia’s service as a member of MSERS and the service time for each group classification. (Exhibit 3.)

9. The State Board of Retirement declined to assign group classification for Ms. Garcia's service, reasoning in relevant part that she was not an active member of MSERS as of April 2, 2012, and her eligibility for group classification on a pro-rated basis was therefore unclear. In support of its position, the Board enclosed a copy of a letter from the Public Employee Retirement Administration Commission, dated January 25, 2017, which opined that deferred retirees who were not active members as of April 2, 2012, but were members prior to that date, do not have the option of pro-rated group classification under G. L. c. 32, § 5(2)(a). (Exhibits 4, 5.)

10. Around January 2021, Ms. Garcia requested the State Board of Retirement to pro-rate the group classification of the positions she held at the Department of Correction. (Exhibit 8.)

11. On February 25, 2021, the Board declined Ms. Garcia's request, reasoning that she is not eligible for pro-rated group classification of her positions at the Department of Correction because she was not an active member of any public employees' retirement system on April 2, 2012. (Exhibit 8.)

12. On March 5, 2021, Ms. Garcia filed a timely appeal of the Board's decision. (Exhibit 9.)

Analysis

Ms. Garcia is not entitled to pro-rated benefits based on the percentage of years of service she rendered in different positions as an employee of the Department of Correction and the group classification of those positions because she was not an active member of a public retirement system on April 2, 2012. A member who entered service prior to April 2, 2012, must be an active member of a public employees' retirement system as of April 2, 2012, in order to qualify

for pro-ration under the unequivocal language of G. L. c. 32, § 5(2)(a). *McKenzie v. State Board of Retirement*, CR-18-0227, at 5 (DALA Apr. 2, 2021).

“[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature” *Rotondi v. Contributory Retirement Appeal Bd.*, 463 Mass. 644, 648 (2012). “Where the statutory language is clear and unambiguous and leads to a workable result, we need look no further.” *Harmon v. Commissioner of Correction*, 487 Mass. 470, 479 (2021).

General Laws c. 32, § 5(2)(a) provides, in pertinent part:

Any active member as of April 2, 2012, who has served in more than 1 group may elect to receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that the member rendered in each group; further, the retirement allowance for members who became members on or after April 2, 2012, and who served in more than 1 group, shall receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that member rendered in each group. The pro-rated benefits shall be calculated in a manner prescribed by the commission. A member who entered service on or before April 2, 2012 and seeks Group 2 or Group 4 classification and is no longer a public employee at the time of the member’s retirement shall be classified based on the position from which the member was last employed.

It is undisputed that Ms. Garcia left public employment in 2010 when she resigned from her position with the Department of Correction and did not return to public employment until 2014 when she was hired by the Framingham Housing Authority. In consequence, she was not an active member of any public employees’ retirement system as of April 2, 2012, and therefore is not eligible for pro-rated benefits under G. L. c. 32, § 5(2)(a).

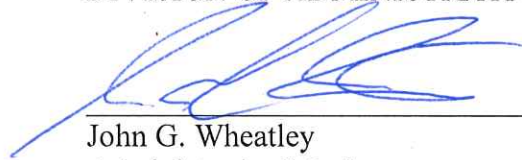
The petitioner contends that she should be treated as a new member who joined after April 2, 2012, given that she started work for the Framingham Housing Authority in 2014. The petitioner refers to the clause in § 5(2)(a) that reads, “members who became members on or after

April 2, 2012, and who served in more than 1 group, shall receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that member rendered in each group.” This language refers to the first time a person becomes a member of a public employees’ retirement system, not the most recent time one is joined. This clause is therefore inapplicable to Ms. Garcia.

While I am sympathetic to Ms. Garcia’s circumstances, the Division of Administrative Law Appeals must construe the statute as written and cannot extend the statute’s application beyond its plain language. *Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass. App. Ct. 250, 257-258 (1976). An expansion of the statute’s application lies within the purview of our state Legislature.

Accordingly, for the reasons stated above, the decision of the State Board of Retirement is hereby affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS



John G. Wheatley
Administrative Magistrate