

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

KEVIN HONAN

Petitioner-Appellant

v.

STATE BOARD OF RETIREMENT,

Respondent-Appellee.

CR-23-0606

DECISION

Petitioner Kevin Honan appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) affirming the decision of respondent State Board of Retirement (SBR) to deny his request for creditable service for the period he received partial incapacity payments pursuant to G.L. c. 152, § 35. The appeal was submitted on the papers without objections by the parties. The magistrate admitted ten (10) exhibits. The DALA decision is dated September 13, 2024. Mr. Honan filed a timely appeal to us.

After considering the evidence in the record and the arguments presented by the parties, we adopt the magistrate’s findings of fact 1 - 4 as our own and incorporate the DALA decision by reference. We affirm the DALA decision for the reasons stated in the Analysis.

Calculation of an employee’s retirement allowance is based on several factors – the employee’s age, the employee’s average high 3 or 5 years of earnings, and the employee’s years of service. G.L. c. 32, § 5(2). The legislature enumerated specific credit for when an employee is out on leave and receiving workers’ compensation benefits. G.L. c. 32, § 14(1) specifically allows for creditable service only for the period in which an employee receives payment for total incapacity.¹ Because Mr. Honan received partial incapacity payments under workers’

¹ Section 14(1) provides in pertinent parts:

“Any employee who was a member in service at the time of sustaining an injury or undergoing a hazard on account of which he becomes entitled to payments under the provisions of chapter one

compensation from mid-November 2006 to January 2010, the provision does not allow credit for that period. The statutory language is plain and thus conclusive as to the legislature's intent.

Allegaert v. Harbor View Hotel Owner LLC, Massachusetts Supreme Judicial Court, No. 20-P-828, slip op. at 2 (November 17, 2021). CRAB cannot add language to the statute that the legislature failed to include. *Retirement Bd. of Somerville v. Buonomo*, [467 Mass. 662](#), 672, 6 N.E. 3d 1069, 1077 (2014.). Where the statutory language is plain and unambiguous, there is no need to look beyond that language to properly interpret it. *See State Board of Retirement v. Boston Retirement Board*, 391 Mass. 92, 94 (1984).

Mr. Honan argues that because payroll records reflect the code “REG” instead of “ASSAULT” that he should receive credit for that period. Although CRAB is sympathetic to Mr. Honan's claims, this does not change the fact that he received partial incapacity payments. CRAB cannot provide credit for service that the legislature did not see fit to include. Accordingly, the DALA decision is affirmed. ***Affirm.***

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

Did not participate

Melinda E. Troy, Esq.
Assistant Attorney General
Chair
Attorney General’s Appointee

Nicolle M. Allen

Nicolle M. Allen, Esq.
Governor’s Appointee

Patrick M. Charles

Patrick M. Charles, Esq.

hundred and fifty-two shall, during the period while he is receiving *weekly payments for total incapacity* under the provisions of sections sixty-nine to seventy-five, inclusive, of such chapter or of sections thirty-four, thirty-four A, thirty-four B, thirty-five A, thirty-five F or thirty-six of such chapter... during a further period of thirty days, retain all the rights of a member in service while he is living, unless and until a retirement allowance becomes effective for him under the provisions of sections one to twenty-eight, inclusive.”

Public Employee Retirement Administration Commission
Appointee

Date: February 19, 2026