

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DARELL KRETCHMAR
Petitioner

Docket No. CR-21-0419

v.

Date: May 19, 2023

HAMPSHIRE COUNTY
RETIREMENT BOARD
Respondent

Appearance for Petitioner:

Darell Kretchmar, *pro se*
Hatfield, MA 01038

Appearance for Respondent:

James Quirk, Esq.
Yarmouthport, MA 02675

Administrative Magistrate:

Eric Tennen

ORDER DENYING MOTION TO RECONSIDER

Respondent, Hampshire County Retirement Board (“HCRB” or “the Board”), filed a motion to reconsider my March 24, 2023 order. Because the motion does not identify a “clerical or mechanical error” in the decision or “a significant factor” that has been overlooked by the DALA Magistrate, it is denied.¹ *See* 801 Code Mass. Regs. § 1.01(7)(1).

¹ Respondent also filed a Motion to Supplement its Motion for Reconsideration. That motion is **allowed**. Finding # 6 in the March 24, 2023 order stated that, after receiving notice, the Petitioner had 180 days in which to *purchase* his service; the Board’s motion clarifies that, after receiving notice, the Petitioner had 180 days in which to *file the application* to purchase his service. While it does not change the outcome of the original decision, the Board’s clarification is appreciated.

First, the Board argues that my order is mistaken because Mass. Stat. 2002, c. 468 eliminated any vesting requirement. However, as I read it, the original statute required “ten or more years of membership service,” *see* G.L. c. 32, § 4(1)(h), but also required the application to be made “within one hundred and eighty days of being notified by the retirement board of their eligibility *after becoming vested* in the retirement system[.]” Mass. Stat. 1996, c. 71, § 3 (emphasis added). In 2002, the Legislature eliminated the service requirement under G.L. c. 32, § 4(1)(h) but kept in place the vesting requirement:

Members in service of a retirement system eligible for said creditable service under this act shall make application for said creditable service not earlier than the date of becoming eligible and not later than 180 days after being notified by the retirement board of their eligibility *after becoming vested in the retirement system* . . .

Mass. Stat. 2002, c. 468, § 2 (emphasis added) (full text reproduced in Appendix).

The HCRB argues that, nevertheless, Group 4 employees “are vested when hired” because G.L. c. 32, § 5(1)(m) does not include them as part of the more general 10-year creditable service requirement applicable to Group 1 and 2 members. In the *Gouck* decision, I did consider that, in some scenarios, Group 4 members have no minimum creditable service requirement; admittedly, I did not explain that in my decision.

In *Gouck*, I wrote the following:

The retirement statute does not actually define “vested.” *See Macedo v. New Bedford Ret. Bd., et al.*, CR-17-570 (DALA July 31, 2020). However, it is generally understood that a member is vested in the retirement system after completing ten or more years of creditable service. *Id.*, quoting G.L. c. 32, § 5(1)(m). Creditable service, in turn, consists of “membership service” and any prior or other service “for which credit is allowable.” G.L. c. 32, § 1. Membership service is simply the amount of actual time (service) someone has worked in a system. *Id.* As often happens, a member could complete 10 years of creditable service without having worked for 10 years; rather, they have a combination of years worked (membership service) plus prior or other credit which totals 10 years.

Gouck v. State Bd. of Ret., CR-19-0311, 2023 WL 2455521 (DALA Mar. 3, 2023).

The Board is correct that Group 4 members are not subject to the 10-year creditable service requirement under G.L. c. 32, § 5(1)(m), which I referenced in *Gouck*. That does not mean, however, that Group 4 members vest when hired.

Although a Group 4 member need not have 10 years of creditable service to retire, they may only retire if they are 1) at least 55 years old; and 2) an active member or an inactive member on authorized leave of absence. *See* G.L. c. 32, § 5(1)(a). Even the HCRB's own website recognizes this. *See* <https://hampshireretirementma.org/p/42/Ready-to-Retire> (last visited May 15, 2023) ("When can I retire? . . . If you are a Group 4 member, you are eligible to retire at age 55 with no minimum service requirement."). Therefore, at the very least, a Group 4 member is not vested until they are 55 years old. Moreover, if a Group 4 member does not retire while an active member (or an inactive member on authorized leave of absence), then they *are* subject to a 10-year creditable service requirement under a different section of the retirement statute.

This vesting argument was previously addressed by a different DALA decision. In *Macedo*, which I referenced in *Gouck*, DALA explained the problem with the Board's reasoning:

Mr. Macedo argues that, because Section 5(1)(m) does not require Group 4 members to serve any particular length of time before becoming eligible for a retirement benefit, he was vested as soon as he started his Group 4 employment in Barnstable in 2001, and thus he was vested in two retirement systems by 2010. PERAC contends that Group 4 members do not vest with the onset of employment because another provision applies as well. That provision is G.L. c. 32, § 10(2)(b-1/2). It provides that:

Any member classified in Group 1, Group 2 or Group 4, who has completed ten or more years of creditable service, and who resigns or voluntarily terminates his service and leaves his accumulated total deductions in the annuity savings fund of the system of which he is a member, shall have the right upon attaining age fifty-five, or at any time thereafter, to apply for a termination retirement allowance to become

effective as provided for in subdivision (3) of this section. Such allowance shall be determined in accordance with the provisions of section five or the provisions of any other section governing superannuation retirement applicable to such member upon the basis of such member's age on the date when the retirement allowance becomes effective, with an amount of creditable service equal to that with which he was credited on the date of his termination of service.

This provision differentiates between individuals who leave employment and retire immediately and those who retire some time later. What this means for Group 4 employees is that if they retire right away after they stop working, under Section 5(2)(e) they need not have any particular length of service to be eligible for a retirement benefit, but if they do not retire immediately, then, when they later apply to retire under Section 10(2)(b-1/2), they are eligible for a retirement benefit only if they have ten years of service.

Macedo. Thus, “the ability of a Group 4 employee to retire without having served any particular length of time seems to be an exception to vesting rather than proof of vesting.” *Ibid.*²

Absent from, but implicit in, *Macedo*'s statement that Group 4 employees under § 5(2)(e) “need not have any particular length of service to be eligible for a retirement benefit” is that they still need to be at least 55-years old. *See* G.L. c. 32, § 5(1)(a).

In sum, Group 4 members do not vest immediately when hired. They vest later, depending on a number of circumstances. But none of those circumstances are present in this case. Petitioner is less than 55 years old and does not have 10 years of creditable service. He is not vested under any scenario. A different Group 4 member in a different case may vest sooner, at which point a board could issue a timely Veteran's letter. However, that is not this case.

CONCLUSION AND ORDER

With these clarifications, the Board's motion to reconsider is **denied**. In any event, the HCRB has filed a timely notice of appeal from my order where CRAB will ultimately review it (and the reasoning of *Gouck*).

² I acknowledge that *Macedo* is presently under appeal with CRAB.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

APPENDIX

AN ACT RELATIVE TO CREDITABLE SERVICE IN THE ARMED FORCES OF THE UNITED STATES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 4 of chapter 32 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out, in lines 132 and 133, the words “and who has completed ten or more years of membership service”.

SECTION 1A. Subdivision (1) of said section 4 of said chapter 32, as so appearing, is hereby amended by inserting after paragraph (q) the following paragraph:-

(r) Notwithstanding any general or special law to the contrary, a member in service or member inactive, as defined in section 3, of a retirement system, who served as a volunteer to the Peace Corps, who completes 10 or more years of membership service as a public schoolteacher or public school guidance counselor, and who retires on or after September 1, 2002, shall receive full credit for the period of such volunteer service but not more than 3 years. Eligibility for the creditable service of members in service of a retirement system shall be conditioned upon payment, in 1 sum or in installments upon such terms as the applicable retirement board may provide, into the annuity savings fund of the applicable retirement system, of an amount equal to the contributions such member in service would have otherwise paid into the retirement system for the period of volunteer service based upon the annual salary the member received in the first year of membership service after that volunteer service.

SECTION 1B. Said subdivision (1) of said section 4 of said chapter 32, as so appearing, is hereby further amended by inserting after paragraph (1½) the following paragraph:-

(1 ¾) A member of the state retirement system who is eligible to receive a retirement benefit pursuant to this chapter who served as an employee of an educational collaborative prior to 1983 may establish such service as creditable service by depositing in the annuity savings fund of the state retirement system in 1 sum or in installments, upon such terms and conditions as the board may prescribe, an amount equal to 10 per cent of the compensation received by the member during such period plus regular interest to the date of the deposit.

SECTION 2. Section 3 of chapter 71 of the acts of 1996 is hereby amended by striking out the second paragraph, as amended by section 45 of chapter 88 of the acts of 1997, and inserting in place thereof the following paragraph:-

Members in service of a retirement system eligible for said creditable service under this act shall make application for said creditable service not earlier than the date of becoming eligible and not later than 180 days after being notified by the retirement board of their eligibility after becoming vested in the retirement system, or for currently eligible members, within 180 days of the acceptance of this act by the local legislative body.