

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DAVID LICHWELL	:	Docket No. CR-21-0275
<i>Petitioner</i>	:	
	:	Date: October 20, 2023
v.	:	
	:	
WORCESTER REGIONAL	:	
RETIREMENT SYSTEM	:	
<i>Respondent</i>	:	

Appearance for Petitioner:

David Lichwell, *pro se*

Appearance for Respondent:

Katherine Hesse, *Esq.*

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

For the reasons stated in *Briggs v. Worcester Reg. Ret. Sys.*, CR-20-384, 2022 WL 9619041 (DALA Mar. 11, 2022), a former call firefighter who is now a permanent firefighter was entitled to purchase creditable service both under the specific rules stated in G.L. c. 32, § 4(2)(b) and under the retirement board’s applicable regulations.

DECISION

Pursuant to G.L. c. 32, § 16(4), Petitioner, David Lichwell, timely appeals a decision by the Worcester Regional Retirement System (“WRRS”) reducing the amount of creditable service he had previously purchased. DALA issued a scheduling order indicating that the matter could be decided without a hearing and instructing the parties to file memoranda and evidence in support of their positions. The WRRS filed its memorandum on May 11, 2022 with one exhibit,

labeled Exhibit 1; the Petitioner filed a response on June 15, 2022 along with 8 exhibits labeled as attachments A-H. I now enter these exhibits into evidence.

FINDINGS OF FACT

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

1. The Petitioner became a member of the WRRS in July 2016. (Ex. F.)
2. Prior to becoming a member of the WRRS, Petitioner was a call firefighter with the town of Berlin from December 12, 1986, until he became a member in 2016 once he joined the Berlin Fire Department. After the Petitioner applied to purchase his prior service as a call firefighter, WRRS mailed him two invoices in response to this request. (Ex. B.)
3. The first, for \$540.72, was to purchase the 5 years of creditable service for 1986 through November 1992 under G.L. c. 32, § 4(2)(b). (Ex. B.)
4. The second invoice, for \$25,548.45, was to purchase 6 years and 3 months of creditable service for the time between December 1992 and June 2016. (Ex. B.)
5. The award of creditable service beyond the five years granted by G.L. c. 32, § 4(2)(b) was authorized by WRRS's 1984 regulation which stated that, for call firemen, "If earnings are \$225.00 per year or more, 4 months of creditable service is allowed for each calendar year of service." (Ex. 1.)
6. On June 28, 2021, WRRS sent a letter to Petitioner informing him that his prior purchased call firefighter service was in error and his creditable service was being reduced by 6 years and 3 months. (Ex. D.)

DISCUSSION

The Petitioner was allowed to purchase his time as a call firefighter. He was able to buy the first five years under G.L. c. 32, § 4(2)(b); he was then able to purchase additional time beyond those five years through a WRRS regulation. The Board states that the recent decision in

Plymouth v. CRAB, 483, Mass. 600 (2019) changed the Petitioner’s ability to purchase creditable service beyond five years pursuant to the 1984 Regulation. Specifically, WRRS argues that *Plymouth* limits the amount of creditable service a call firefighter can accrue under § 4(2)(b) to five years unless the local municipality adopts rules allowing for further credit. Its position now is that this local requirement cannot be circumvented through board regulations. This issue is identical to those that DALA decided in *Briggs v. Worcester Reg. Ret. Sys.*, CR-20-384, 2022 WL 9619041 (DALA Mar. 11, 2022) as well as *Welsh v. Worcester Reg. Ret. Sys.*, CR-20-0396, 2023 WL 2915909 (DALA Apr. 7, 2023). Although *Briggs* is presently under appeal to CRAB, it is a consistent precedent I am bound to follow. *See Welsh, supra*.

CONCLUSION AND ORDER

Therefore, for all the reasons stated in *Briggs*, the WRRS’s decision is **vacated** and the matter is remanded for the Board to recalculate the Petitioner’s prior creditable service consistent with this opinion.¹

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

¹ 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)). Because I have no documentation concerning the Petitioner’s earnings in this case, I cannot tell if this impacts his service. That is for the Board to determine upon remand.