

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Michael T. McNally,
Petitioner,

No. CR-24-0658

Dated: July 11, 2025

v.

State Board of Retirement,
Respondent.

ORDER OF DISMISSAL

Petitioner Michael McNally appeals from a decision of the State Board of Retirement (board) denying his application to retire for superannuation. The board has filed a motion to dismiss, which Mr. McNally has opposed. The motion is meritorious essentially for the reasons stated there.

I

For present purposes, Mr. McNally's allegations are taken as true. *See White v. Somerville Ret. Bd.*, No. CR-17-863, at *5 (Div. Admin. Law App. Nov. 16, 2018). He became a public employee in 2001 and a member of the State Police in 2011. In July 2024, he wrote to his supervisors: "I respectfully request retirement from the Massachusetts State Police I have received an offer of employment as a Lecturer at the University of Massachusetts in Amherst."

Mr. McNally began working as a lecturer in September 2024. Apparently he has continued to serve in that position and has remained a member in service of the retirement system administered by the board.

The State Police issues "personnel orders" to memorialize departures from its ranks. At some point, Mr. McNally began to speak to State Police personnel about the language that would appear in his personnel order. It was and remains Mr. McNally's hope to be described as having

achieved an “honorable” discharge resulting from a “retirement”; the alternative apparently would be an “ordinary” discharge resulting from a “resignation.”

In furtherance of the foregoing goal, in September 2024, Mr. McNally presented the board with an application to retire for superannuation under chapter 32 of the General Laws. In light of subsequent events, it is uncertain whether Mr. McNally understood the legal consequences of retirement under chapter 32, including the right to an allowance, the transition to non-contributing, non-creditable retirement-system membership, and the applicability of certain caps on earnings. *See* G.L. c. 32, §§ 4(1)(a), 5(2)(a), 22(1)(b), 91, 91A.

Mr. McNally’s preprinted application form instructed applicants to identify their retirement “group.” Mr. McNally checked the box: “3 (State Police only).” The board denied the application, prompting this appeal.

II

The retirement law classifies members into four groups. Group 3 is reserved for “[o]fficers and inspectors of the department of state police.” G.L. c. 32, § 3(2)(g). That group is governed by its own set of provisions. *Id.* § 26. One of them grants a substantial retirement allowance to any member “who has performed service in the department of state police for not less than twenty years.” *Id.* § 26(3)(a).

Mr. McNally’s retirement application was defective in the sense that he was not entitled to retire as a member of the group he identified as applicable. By the time he filed the application, Mr. McNally had left group 3 to become a lecturer. He also was not entitled to retire under the group 3-specific rule of § 26(3)(a), because his stint at the State Police was less than twenty years long. Mr. McNally’s submissions on appeal do not challenge these points.

With respect to the form of relief that Mr. McNally does seek here, his submissions are equivocal. His eventual goal is to obtain an “internal State Police document indicating that

[he has] been honorably discharged from State Police service.” But within the immediate confines of this proceeding, there are two different, mutually exclusive requests that Mr. McNally may be understood to be making.

One possibility is that Mr. McNally is seeking not actual retirement benefits but a bespoke certificate stating that he could retire if he wished to do so.¹ This is not the request that Mr. McNally posed to the board and that the board denied in the decision on appeal. *See Finn v. Massachusetts Teachers’ Ret. Syst.*, No. CR-20-0434, 2024 WL 4582628, at *6 (Div. Admin. Law App. June 21, 2024). More substantively speaking, it is unlikely that the board could improve on the documentation that it has already issued. In January 2025, the board sent Mr. McNally an “estimate of potential retirement benefits,” calculating a retirement allowance of over \$40,000 per year. *See* G.L. c. 32, § 20(k). A board cannot properly state an active member’s entitlements with actual certainty, because those entitlements are “dependent on . . . variables not determinable until the date of [retirement].” *Early v. State Bd. of Ret.*, 420 Mass. 836, 841 (1995). *See Gladkowski v. State Bd. of Ret.*, No. CR-92-925, at *6 (Div. Admin. Law App. June 2, 1995, *aff’d*, Contributory Ret. App. Bd. Oct. 16, 1995).

The second possibility is that Mr. McNally wishes to have his retirement application evaluated as if he had not checked the box “[group] 3 (State Police only).”² As a practical matter, Mr. McNally can realize that goal by filing a corrected application form. The board has invited him to do so. As a formal, procedural matter, this second request also is not the one that

¹ Mr. McNally writes (emphasis added): “I respectfully request a *letter* from [the board] indicating that I am *able* to retire from state service I would then present this letter to the Department of the State Police.”

² He writes that he requests “retirement under Chapter 32, Section 5,” and that the board “denied [his] application based on what could be classified as a clerical error.”

Mr. McNally presented to the board unsuccessfully. *See Finn*, 2024 WL 4582628, at *6. In certain circumstances, it may be appropriate for a case to be remanded with prescribed amendments to the appeal-generating application. *See Witts v. Lowell Ret. Bd.*, No. CR-17-1046, at *29 (Div. Admin. Law App. Nov. 22, 2019); *Ricketts v. State Bd. of Ret.*, No. CR-94-1016, at *8-9 (Div. Admin. Law App. Nov. 16, 1995). But the ambiguous nature of Mr. McNally’s papers weighs against this course of action. If he wishes to retire under chapter 32 with service both in group 1 and in group 3, he should make that wish clear by filing an accurate form.³

Taking a step back, this dispute appears to have been triggered by an unfortunate terminological disconnect. The retirement boards are used to working with the technical legal meanings of the terms appearing in chapter 32. It seems that procedures of the State Police use the term “retirement” in a non-technical sense. It is appropriate for the boards to provide their members with reasonable assistance even on nonstandard requests. But accepting all of Mr. McNally’s allegations as true, the board’s denial of his application as filed was not erroneous.

III

In view of the foregoing, it is hereby ORDERED that the motion to dismiss is ALLOWED and this appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

³ It will be for the board to determine in the first instance whether Mr. McNally needs to “resign” from his lecturer position as part of the retirement process, or whether he is already eligible for retirement under G.L. c. 32, § 10(1), by virtue of his separation from the State Police.