

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Dominic Pegnato,
Petitioner

v.

Docket No. CR-21-0685

Chelsea Retirement System,
Respondent

Appearance for Petitioner:

Dominic Pegnato, *pro se*

Appearance for Respondent:

Brian P. Monahan, Esq.

Administrative Magistrate:

Melinda E. Troy, Esq.

SUMMARY OF DECISION

The Chelsea Retirement System's ("CRS") decision to reduce the Petitioner's retirement allowance because it determined that his retirement allowance was originally calculated to include more creditable service than he had actually accrued is affirmed. The CRS also properly recouped the overpayment of his retirement allowance.

DECISION

This appeal concerns the determination by the Chelsea Retirement System ("CRS") to reduce a retired member's allowance because it determined that he had not accrued the amount of creditable service with which he had originally been credited, so his retirement allowance had been overpaid. The Petitioner retired in 2013 and his benefit calculation originally was completed crediting him with 10.9167 years of creditable service. In 2021, the Public Employees Retirement Administration Commission ("PERAC") conducted an audit of the CRS

and determined that the Petitioner had only accrued 10 years of creditable service and reduced his retirement allowance prospectively. The CRS also denied his request for a waiver of the overpayment made to him and voted to recoup the amount that had been overpaid to him from the date of his retirement through the time his retirement allowance was adjusted, plus interest.

I held a hearing on March 27, 2024, at the Division of Administrative Law Appeals' ("DALA") offices in Malden, MA which I digitally recorded with the parties' consent. The CRS called no witnesses. Mr. Pegnato appeared *pro se* and testified on his own behalf. He called no other witnesses. The parties agreed to the exhibits to be submitted and I admitted 7 exhibits into the record. They are described in an addendum at the end of this decision. Both parties stated their arguments on the record and neither submitted a written closing memorandum. I have marked for identification the pre-hearing memoranda submitted by the parties. The Petitioner's pre-hearing memorandum is marked "A" for identification and the Respondent's pre-hearing memorandum is marked "B" for identification. After the hearing, I requested clarification from the Respondent as to how the amount of Mr. Pegnato's creditable service had been calculated. The record closed when DALA received that information.

For the reasons set forth below, I am affirming the CRS's decision to recalculate the Petitioner's retirement allowance based on its determination that he had accrued 10 years of creditable service, not the 10.9167 years of service upon which the CRS originally based its calculation, and its decision to recoup the amount of the overpayment made to Mr. Pegnato.

FINDINGS OF FACT

1. The Petitioner, Dominic Pegnato, was formerly an elected official in Chelsea, serving as an Alderman from January 2, 1984 to December 29, 1994. He retired effective

- November 1, 2013¹ as a deferred retiree. (Exhibit 1; Testimony.)
2. The “total creditable service” reflected on the CRS form titled, “Estimated Retirement Allowance” dated October 23, 2013 was 10.9167 years, which is 10 years and 11 months of service. (Exhibit 1.)
 3. A few weeks later, Mr. Pegnato submitted a retirement application dated November 12, 2013 which stated he had accrued 10 years and 11 months of creditable service. (Exhibit 6.)
 4. Mr. Pegnato has no recollection of why his retirement application reflected that additional 11 months of creditable service beyond 10 years. (Testimony.)
 5. The CRS initially calculated Mr. Pegnato’s retirement allowance utilizing the 10 years and 11 months of creditable service stated on its estimate to him and on his retirement application. (Stipulation of the parties.)
 6. In or around 2021, the Public Employees Retirement Administration Commission (“PERAC”) conducted an audit of the CRS’s operations pursuant to its authority under G.L. c. 32, § 21(1). One finding of the audit related to the Petitioner’s retirement allowance. The audit finding stated, “One retired elected official had an extra 11 months of creditable service.” (Exhibit 4.)
 7. By letter dated November 16, 2021, the then-Executive Director of the CRS informed Mr. Pegnato that effective November 2021, his retirement allowance had been adjusted downward to reflect the 10 years of creditable service that he had actually accrued. The letter stated that his gross monthly retirement allowance would be

¹ Mr. Pegnato stated an effective retirement date of October 31, 2013 on his retirement application. The CRS appears to have calculated his allowance with an effective date of November 1, 2013. This difference in dates has no impact on the calculation of his benefit.

- reduced from \$162.81 to \$148.73. The letter also informed Mr. Pegnato that his retirement allowance had been overpaid from November 1, 2013 through October 31, 2021 and as a result he was required to repay the CRS \$1,332.43, which was the amount of the overpayment of his retirement allowance plus applicable interest, which was then in the amount of \$131.09. (Exhibit 2.)
8. By letter dated December 7, 2021, Mr. Pegnato informed the CRS that he did not dispute the prospective adjustment of his retirement allowance. However, he requested that the CRS waive the amount of the overpayment made to him. He based his request for a waiver on his involvement in the community of Chelsea after he was no longer serving as an Alderman. After serving as an elected official, Mr. Pegnato assisted in getting a new charter passed, but he does not recall being paid for providing this service to the city. (Exhibit 5; Testimony.)
 9. Subsequently, by letter dated December 14, 2021, the CRS informed Mr. Pegnato that it had denied his request for a waiver of the overpayment and informed him that he could appeal that determination. (Exhibit 3.)
 10. By letter dated December 29, 2021, hand-delivered to DALA, Mr. Pegnato filed a timely appeal of the CRS's determination. Mr. Pegnato's appeal was based on the fact that he had "no input into the creditable service time" and he had no knowledge that the creditable service with which he had been originally credited was incorrect. (Exhibit 7.)

DISCUSSION

When the CRS discovered that Mr. Pegnato had been paid a retirement allowance based on 10 years and 11 months of service, rather than the 10 years of service he had actually accrued,

it reduced the amount of the retirement allowance paid to him and recouped the amount of that allowance that had been paid to him since he retired effective November 1, 2013. The CRS was required to correct the error it made in paying Mr. Pegnato this improperly calculated amount.

General Laws c. 32, § 20(5)(c)(2) provides, in pertinent part,

(2) When an error...is made in computing a benefit and, as a result, a member...receives from the system more or less than the member...would have been entitled to receive...had the error not been made, the...error shall be corrected and as far as practicable...future payments shall be adjusted so that the actuarial equivalent of the pension or benefit to which the member or beneficiary was correctly entitled shall be paid.

When the language of a statute is plain and unambiguous, there is no reason to look beyond it to determine its meaning. *State Board of Retirement v. Boston Retirement Board*, 391 Mass. 92, 94 (1984). Here, as indicated by the use of the word “shall,” G.L. c. 32, § 20(5)(c)(2) required the CRS to correct the error it made in initially computing the Petitioner’s benefit and required it to recoup the overpayment made to him. *Bristol County Retirement Board v. Contributory Retirement Appeal Board*, 65 Mass. App. Ct. 443, 449 (2006) (“The [statutory] language reflects a policy that neither a member nor a retirement system shall be prejudiced by record-keeping or calculation errors, and that, in such circumstances, benefits shall, if ‘practicable,’ be adjusted to correct the mistake. General Laws c. 32, § 20(5)(c)(2), is not a forgiveness statute.”)

Moreover, had the CRS failed to correct the amount paid to Mr. Pegnato, it would have provided Mr. Pegnato a benefit greater than he was entitled to receive, which is impermissible. *Clothier v. Massachusetts Teachers’ Retirement Board*, 78 Mass. App. Ct., 143, 146 (2010). In *Clothier*, the Appeals Court rejected the argument that the MTRS was required to continue paying a benefit that was originally calculated to include a service purchase that the plaintiff should not have been permitted by law to make, stating:

[E]ntitlement to retirement benefits and the amount of such benefits is governed entirely by G.L. c. 32. Because the statute defines and limits the benefits to which Clothier and other like retirees are entitled, those benefits are a legal determination that may not be enlarged, even by an erroneous interpretation by the TRB or any of its employees.

Id. (internal citations omitted.) Here, Mr. Pegnato is similarly entitled to only the benefit that was authorized by law – no more, no less. The CRS acted properly in this circumstance by ceasing to pay him the incorrect allowance that he initially received, reducing his retirement allowance and recouping the overpayment made to him.

This is not to say that Mr. Pegnato is at fault for the error which led to this overpayment and the CRS made no such argument. Although Mr. Pegnato testified that he had no recollection as to how he submitted a retirement application stating that he had accrued 10 years and 11 months of creditable service, he did so only a few weeks after CRS provided him a retirement estimate stating that he had accrued that much creditable service. Unfortunately, even if Mr. Pegnato was simply providing back to the CRS the erroneous information that had been provided to him, he had not actually accrued more than 10 years of creditable service, and he was never entitled to the initial retirement allowance that he received.

Mr. Pegnato urges that DALA consider his community service to Chelsea and allow it to augment the amount of creditable service that he has accrued and thus make the initial benefit paid to him correctly calculated. There is no evidence that Mr. Pegnato was compensated for the additional service he provided, and in fact he testified that he did not recall being paid for this additional service he provided. Unfortunately, there is no provision in G.L. c. 32 which would permit the CRS or DALA to award creditable service for performing community service when an individual is not compensated or acting as an “employee” for a public entity. There is also no provision within c. 32 to purchase creditable service for this time.

SO ORDERED,

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E. Troy
Administrative Magistrate

Dated: August 8, 2025

Exhibit List

1. CRS Estimated Retirement Allowance form dated October 23, 2013.
2. Letter from CRS to the Petitioner dated November 16, 2021, informing him of the overpayment of his retirement allowance.
3. Letter to the Petitioner from the CRS dated December 14, 2021 informing him that his request for a waiver of the overpayment was denied.
4. Excerpts from the PERAC audit and the CRS's response thereto.
5. Letter from the Petitioner to the CRS dated December 7, 2021, requesting waiver of the overpayment.
6. Petitioner's application for superannuation retirement dated November 12, 2013.
7. Petitioner's letter of appeal dated December 29, 2021.