

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

Middlesex, ss.

Scott Pitta,
Petitioner,

Docket No.: CR-25-0087

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Scott Pitta, Esq.

For Respondent: Brendan McGough, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner was a member of the National Guard. In 2003, he was called into active wartime service in Iraq during the Gulf War. Because of that, he meets the definition of veteran under G.L. c. 4, § 7, 43rd clause, and is entitled to purchase creditable service for his prior military service under G.L. c. 32, § 4(1)(h). The Division of Administrative Appeals has previously issued conflicting decisions about whether, as part of that purchase, a veteran is entitled to any credit for his time in active duty for training. After a close examination of § 4(1)(h), I find that that Mr. Pitta is entitled to purchase his time in active duty for training.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the State Board of Retirement's (Board) decision denying his request to purchase some of his prior military service. Specifically, at issue in this case is whether he is entitled to any credit for his time in active duty

for training in the National Guard. I held a virtual hearing on March 17, 2026. Mr. Pitta was the only witness. I entered 16 exhibits into evidence.¹

FINDINGS OF FACT

General military service

1. There are various types of military service, but they all fall under two umbrellas: reserve component and active (or regular). (Testimony.)
2. Active service is what is more commonly understood as serving full-time in a branch of the armed forces, e.g. the U.S. Army or Navy, such as on a military base or in combat. (Testimony.)
3. Reserve component service encompasses service in the National Guard or the Reserves. (Testimony.)
4. Enlistment in the National Guard requires a commitment of a certain number of years, which can be renewed. For Mr. Pitta, his initial commitment was six years, which he did renew. It also requires training about one weekend a month and for one two-week period per year (“in-year training”). Lastly, a National Guard member could be called up to full-time service at any time. (Testimony.)
5. When a National Guard member is not performing in-year training, or called into full-time service, they remain an enlisted member of the National Guard. But they can work a private job and spend their free time as they wish. (Testimony.)
6. There are two paths for a National Guard member to be called up to full-time service.

¹ The parties submitted 16 exhibits into a joint appendix. They did not label the exhibits but did paginate the joint appendix as A1-A22. For ease, I will cite to the joint appendix page numbers.

One is through U.S.C. Title 10 and the other is through Title 32. (Testimony).

7. Title 32 service is when the governor of a state orders a National Guard member to full-time duty for homeland defense activities—for example, in response to a natural disaster. (Testimony).
8. Title 10 service is when the President activates a guard member for an issue at the national level—for example supporting the U.S. armed forces during an overseas conflict. (Testimony.)²

Active Duty in Training

9. In 1992, Mr. Pitta enlisted in the National Guard while in high school. (Testimony.)
10. During Mr. Pitta’s enlistment he had three types of service. The first was active duty for training (ADT). (Testimony.)
11. When anyone first enlists in the military—active or reserve service—they must undergo basic training, a type of ADT. Mr. Pitta’s was from July 1992 through September 1992. (Testimony; A11-A12.)
12. Basic training is often immediately followed by technical (or job) training, another type of ADT. However, because Mr. Pitta enlisted while he was still in high school, he was allowed to return to school and do his technical training the next summer, from June 1993 through July 1993. (Testimony; A11-A12.)
13. Mr. Pitta performed both these trainings on a base on Cape Cod, MA. For both, he had to stay on the base the entire time, 24 hours a day, 7 days a week. He trained side-by-

² For a more detailed description of the different kinds of National Guard service, see *Vezina v. MWRA Employees’ Ret. Sys. et al*, CR-12-0161 (Div. Admin. Law Apps. Jan. 22, 2016).

side with other reserve component and active service recruits, i.e. members of the National Guard, Army, Navy, etc. He was subject to the code of military justice.

(Testimony.)

14. After he finished his training, he continued serving in the National Guard and attending his in-year trainings. (Testimony.)
15. In 1997 he was selected to be an officer. This too required extensive training. He was in ADT for pilot training from April 1998 through April 1999. (Testimony; joint statement; A11-A12.)
16. He did this officer training in Alabama full-time. Just like his training on Cape Cod, he stayed on base throughout his duration, training side-by-side with other reserve and active service trainees. He was subject to the code of military justice. He could not work a private job. (Testimony.)
17. There was some confusion about whether any of Mr. Pitta's ADT was also considered Title 10 or Title 32 service. The National Guard records do not specify anything about his basic and job training. But they indicate his officer training was under Title 32, labeled "operational support." (A11-A12.)

Other service

18. The second type of service Mr. Pitta performed was wartime service.³ From December 2003 through February 2005, he was called up into active-duty wartime service in Iraq during the Gulf War. Mr. Pitta flew helicopters and by all accounts served valiantly. He

³ Wartime service includes service performed by, among other individuals, a "Persian Gulf veteran," which applies to Mr. Pitta's service. G.L. c 4, § 7, cl. 43.

received several commendations including a combat action badge. (Joint statement; A18-A19.)

19. In his National Guard records, this service is listed as “Army National Guard Mobilized Service” which I infer is Title 10 service. (A11.)
20. The third type of service Mr. Pitta performed was his National Guard service. This applies to all other times when he was not in ADT or serving in Iraq. Throughout his enlistment, he remained a member of the National Guard and complied with guard obligations, such as his in-year training. (Testimony; A6-A18.)
21. He was honorably discharged in 2005. (Joint statement.)

Purchase application

22. Mr. Pitta applied to purchase his prior military service. (Joint statement.)
23. There is much the parties agree on. They agree Mr. Pitta is a “veteran” as defined by G.L. c. 4, § 7, 43rd clause. (Joint statement; A6-A8.)
24. They agree he is entitled to credit on a 1:1 basis for his wartime service. They also agree he is entitled to credit on a 5:1 basis for his National Guard service. (Joint statement.)
25. The disagreement applies to whether he is entitled to any credit and, if so, at what rate, for his three periods of ADT: basic training, technical training, and officer training. (Joint statement.)
26. The Board denied his application to purchase his time in ADT pursuant to a prior decision by the Division of Administrative Law Appeals (DALA) that held such service is not eligible for purchase. *Stanton v. Quincy Ret. Bd.*, CR-18-0121, 2019 WL 9054851 (Div. Admin. Law Apps. June 28, 2019). (A2-A5.)

DISCUSSION

Members of a retirement system who are “veterans” may purchase creditable service for their time in “active service in the armed services of the United States.” G.L. c. 32, § 4(1)(h). Determining whether someone may purchase this service is a two-step process. First, the applicant must meet the definition of a veteran. Second, if they do, the board then calculates how much service time is available to purchase. *Id.*

Mr. Pitta meets the definition of veteran

With this framework in mind, I turn to Mr. Pitta’s case and begin with step one. A “veteran” under G.L. c. 32, § 1 is “any person who is a veteran as defined in clause Forty-third of section seven of chapter four.”⁴ Under G.L. c. 4, § 7, cl. 43 (Clause 43), a veteran is, among other things, someone who was honorably discharged and served full time National Guard duty under Titles 10 or 32 for not less than 90 days of “active service,” at least one day of which was for wartime service. G.L. c. 4, § 7 cl. 43.⁵

Clause 43 has one important exception: “Active service in the armed forces’, as used in this clause shall not include active duty for training in the army National Guard or air National Guard or active duty for training as a reservist in the armed forces of the United States.” This means that members who served in the National Guard (or reserves) and underwent ADT, but

⁴ Section 1’s definition of a veteran provides other ways in which someone may qualify as a veteran not relevant to this appeal.

⁵ Clause 43 defines veterans in other ways not applicable here. For example, it applies to any person who was in active service in the army, navy, marine corps, coast guard, or air force for not less than 180 days. G.L. c. 4, § 7, cl. 43.

nothing more, do not meet the definition of veteran under Clause 43. *See Flemings v. Contributory Ret. App. Bd.*, 431 Mass. 374, 377-78 (2000); *Nietupski v. State Bd. of Ret.*, No. CR-97-1690 (Contributory Ret. App. Bd. May 2, 2000).⁶ This is one of the more common reasons retirement boards reject a member’s application to purchase military service. *See e.g. Nietupski, supra; Emanuelson v. MTRS*, CR-24-0681, 2025 WL 752010 (Div. Admin. Law Apps. Feb. 28, 2025); *Vezina, supra*. In any event, both parties agree that this exception does not apply here because Mr. Pitta has service that meets the Clause 43 definition of veteran—namely, that he served more than 90 days in active service for the National Guard under Titles 10 or 32, at least one of which was wartime service.

A member who meets the definition of veteran is entitled to creditable service for ADT

Having established that Mr. Pitta meets the definition of veteran, the next step is to determine how much credit he is entitled to purchase. Veterans may purchase no more than four years of military service. G.L. c. 32, § 4(h). For any time spent in “active service in the armed services,” they may purchase their time on a 1:1 basis. *Id.* But National Guard and reserve service is different: “Creditable service time, both enlisted and commissioned, may be applied toward retirement on a ratio of 5 years of national guard service or 5 years of active reserve service substitutable for each year of active service.” *Id.*

The parties agree that Mr. Pitta can get 1:1 credit for his active-duty wartime service in

⁶ Interestingly enough, the term “active service in the armed forces” is only found in the definition of a “Vietnam veteran.” It may not be readily apparent that the limiting language applies to the rest of the definition of a veteran, and not just a Vietnam veteran; but for a variety of reasons, it does. For a detailed explanation of the origins and application of this language, *see Greeley v. Civil Service Commission*, 1 Mass. App. Ct. 746, 751-52 (1974) and *Vezina, supra*.

Iraq (from Dec. 2003 – Feb. 2005). The parties also agree he may get 5:1 credit for his time in the National Guard from 1993 until his honorable discharge in 2005 (which is the rest of his time other than ADT). Combining those two periods entitles Mr. Pitta to 3 years, 3 months, and 24 days of creditable service. Because he can purchase up to four years, this brings us to the basis of disagreement: whether his ADT may be purchased and, if it can, whether he gets 1:1 credit or 5:1 credit for that time.⁷

The Board denied him any credit for his ADT time because it says it is bound by *Stanton, supra*. That is a reasonable position since *Stanton* applied the same exclusionary phrase in Clause 43's definition of "active service in the armed force" to the calculation of how much service a veteran may purchase. Mr. Stanton was in the Naval Reserves. Like Mr. Pitta, he first went through ADT. He was later called up into wartime service. There was no dispute he met the definition of veteran on account of his wartime service. However, DALA agreed with the Quincy Board of Retirement that Mr. Stanton could not purchase his time in ADT.

Mr. Stanton's period of active service did not include his first six months of Navy service between December 8, 1970 (when he first entered the Navy and was "Ordered to ACDUTRA" (active duty training) in the United States Naval Reserve), and March 7, 1972, when he entered active duty in the Navy . . .

As a matter of law, therefore, Mr. Stanton's first six months of Navy service, which was indisputably "active duty for training as a reservist" in the Navy rather than "active service" in the Navy, does not qualify as the "active service" of a veteran that can be purchased for retirement credit under M.G.L. c. 32, § 4(1)(h).

⁷ If he only gets 5:1 credit for this time, he will be eligible to purchase additional service, but he will not receive the maximum of four years. If he is entitled to credit at a 1:1 basis, he has more than enough time to receive the maximum four-year credit.

Stanton, supra, at *12.^{8, 9}

Understanding that DALA cases are sometimes hard to find, I note that neither party referenced any decisions, issued long before *Stanton*, which interpreted § 4(1)(h) differently. I located at least two on the Social Law website: *Bramwell v. MTRS*, CR-03-761 (Div. Admin. Law Apps. Jan. 25, 2005) and *Fitzgerald v. State Bd. of Ret.*, CR-03-649 (Div. Admin. Law Apps. Dec. 5, 2003). *Bramwell* offers the more thorough analysis. Mr. Bramwell enlisted in the U.S. Navy reserves and spent his first year and half in ADT. He was then called up for two years of active wartime duty where he served in Vietnam. When he left Vietnam, he returned to the reserves for a few more years. MTRS originally only allowed him credit for his two years of wartime service. After he provided better documentation, MTRS granted him credit for all his time spent training, both in ADT and in in-year trainings for the reserves; but it did not give him credit for his time as a member of the reserves not spent training. *Id.*

⁸ The *Stanton* decision cites three cases in support of this proposition: *Grunebaum v. Quincy Ret. Syst.*, No. CR-05-230, 2007 WL 1362843 (Div. Admin. Law Apps. Jan. 3, 2007), *aff'd* (Contributory Ret. App. Bd., June 9, 2006), *Vezina, supra*, and *McGarry v. MTRS*, CR-09-049 (Div. Admin. Law Apps. July 24, 2009). However, these cases were only about whether the petitioners met the definition of “veteran,” which they did not because of the exclusionary section in Clause 43 concerning active duty for training. No case discussed whether the exclusionary clause also applied to a board’s calculation of how much time a veteran may purchase *if* they establish they meet the definition of “veteran.”

⁹ *Stanton* does not refer to one other case which spoke to this issue, *Scortino v. Massachusetts Teachers’ Ret. Syst.*, No. CR-00-897 (Div. Admin. Law Apps. Date unknown), *aff'd* (Contributory Ret. App. Bd. July 31, 2002). Mr. Scortino received credit for his active army service and three months for “other service”; it does not appear as if he received any credit for his army-reserve service or reserve service ADT. DALA affirmed without much explanation: “The Petitioner did not present any credible or reliable documentation to show that he had performed any services which would entitle him to an additional 18 months of military service credit.” *Id.* CRAB affirmed, simply saying that the Board looked at all of the Petitioner’s documents and gave him the credit he was owed. *Id.* Because neither tribunal explained its reasoning, I do not rely on these decisions. *Bramwell, supra*, at 8.

The issue in *Bramwell* was essentially the inverse of Mr. Pitta's—where Mr. Pitta is not getting credit for his ADT but is getting credit for his non-ADT service with the National Guard. DALA ultimately held Mr. Bramwell was entitled to credit at a 5:1 ratio for all his time training and in the reserves. Although not the exact issue here, what matters most from *Bramwell* is its reasoning.

First, *Bramwell* analyzed several federal regulations that showed Mr. Bramwell's time in the reserves, both while training and not training, was considered "active" service under federal law. Second, it cited another DALA decision where the State Board had agreed to allow a veteran to purchase all of his time including wartime and reserve time. *Id.*, citing *Tobin v. State Bd. of Ret.*, CR-99-592 (Div. Admin. Law Apps. Apr. 11, 2000), *aff'd* (Contributory Ret. App. Bd. Sep. 15, 2000).¹⁰ Finally, and most relevant here, *Bramwell* explained why the exclusionary language in Clause 43 should not apply to the calculation of creditable service:

The G.L. c.4, § 7, clause 43 criteria only appl[y] to the determination of whether or not Mr. Bramwell is a qualifying veteran to take advantage of the military service credit, but does not have an impact on the 5:1 ratio aspects calculations done to give him military service credit for his time in the active reserves. That is, active duty for training in the reserves will not be sufficient to satisfy the definition of veteran, but there is no reason to rely on that provision to permit the 5:1 ratio only to reach such training time periods of a qualified veteran as to the amount of his additional military service credit for his active reserve service.

Id.

Although the magistrate in *Fitzgerald* did not write a lengthy explanation of her decision, she agreed with *Bramwell*, noting that "[t]he disqualification of active duty for training is a

¹⁰ The issue for the petitioner in *Tobin* was that, after receiving an invoice from the Board, he did not pay it on time.

disqualifier for veteran status, not for the length of military service eligible for purchase.”

Fitzgerald, supra. The magistrate ultimately held that Mr. Fitzgerald, who qualified as a veteran based on his wartime service, was entitled to purchase his four months training as an enlisted member of the U.S. Naval reserves—though she did not specify at what ratio. *Id.*

Thus, while the Board indicates it is bound by *Stanton*, prior Board practice and DALA decisions apply and interpret § 4(1)(h) differently. Of these two interpretations, I find the reasoning of *Bramwell* (and *Fitzgerald*) more persuasive.

Whether veterans are entitled to any credit for their time in training turns on whether the disqualification phrase in Clause 43—“active service in the armed forces”— is meant to apply only to Clause 43 or to other statutes such as § 4(1)(h). The best place to start is the disqualification phrase itself, which has limiting language: “‘Active service in the armed forces’, as used in this clause[.]” Clause 43 (emphasis added). “This clause” obviously refers to Clause 43 within G.L. c. 4, § 7. Thus, nothing suggests the disqualifying phrase was intended to apply to another clause, or section or chapter, like G.L. c. 32, § 4(1)(h). See *Martha's Vineyard Land Bank Comm'n v. Assessors of W. Tisbury*, 62 Mass. App. Ct. 25, 27-28 (2004), quoting *Pyle v. School Comm. of S Hadley*, 423 Mass. 283, 285 (1996), and *Weitzel v. Travelers Ins. Cos.*, 417 Mass. 149, 153 (1994) (“‘Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent ...’ and ‘the courts enforce the statute according to its plain wording ... so long as its application would not lead to an absurd result.’”).

Moreover, when the legislature intended to incorporate the disqualifying phrase in a definition, it manifested that intent clearly. To that end, chapter 32 did incorporate the disqualifying phrase in a limited way. Section 1’s definition of “veteran” specifically uses Clause

43's definition and all its limitations. I have applied that definition, concluding that Mr. Pitta performed service that enabled him to qualify as a "veteran." But § 4(1)(h), which sets forth the types of service that are creditable for someone who qualifies as a "veteran," makes no reference to Clause 43, and it does not define the critical phrases of "active service," "active service in the armed services" or "national guard service," much less with the kind of very specific limiting or disqualifying language found in Clause 43. *Cf. Fernandes v. Attleboro Hous. Auth.*, 470 Mass. 117, 129 (2014) ("The omission of particular language from a statute is deemed deliberate where the Legislature included such omitted language in related or similar statutes.").

To read § 4(1)(h) differently and exclude any credit for ADT would create an absurd result. The legislature obviously intended National Guard members to get some credit for their time serving in the National Guard. Under the Board's interpretation, National Guard members get credit for their in-year trainings and the weeks and months in which they have no guard obligations at all. But they do not get credit when they spend 24 hours a day in ADT, sometimes up to year like Mr. Pitta, to be ready in case they are called up into full-time, active duty.

Here, the Board credits Mr. Pitta for service while he was an enlisted member of the National Guard—so while he was also working his private job, and, hypothetically, at the movies on a weekend or on vacation. But it does not credit him for service when he lived full-time on an army base in Alabama for one year training to be a combat pilot. This is not logical or sensible. *See Adamowicz v. Ipswich*, 395 Mass. 757, 760 (1985), *quoting Lexington v. Bedford*, 378 Mass. 562, 570 (1979), *in turn quoting Bell v. Treasurer of Cambridge*, 310 Mass. 484, 489 (1941) ("The construction of a statute which leads to a determination that a piece of

legislation is ineffective will not be adopted if the statutory language ‘is fairly susceptible to a construction that would lead to a logical and sensible result.’”).

Moreover, as noted, the Board’s current calculation includes credit for Mr. Pitta’s in-year National Guard trainings. While those are not classified as ADT, they are still a type of training. There is no logical reason to allow creditable service for one kind of training but not the other, especially given how extensive his officer training was.

Accordingly, I agree with *Bramwell*, as it offers a better interpretation of how Clause 43 and § 4(1)(h) should be read together.

Mr. Pitta’s Title 32 officer training should be credited at a 1:1 ratio

Because a National Guard member who meets the definition of veteran is entitled to creditable service for ADT, the remaining question is whether it is at the 1:1 or 5:1 ratio.

Bramwell concluded all reserve time, including training, should be credited at the 5:1 ratio, although it does not appear the Petitioner there asked for more than that.

Section § 4(1)(h) allows 1:1 credit for “active service in the armed services” and 5:1 credit for “national guard service” although it does not define either. The parties do not dispute that Mr. Pitta should receive 1:1 credit for his wartime service in Iraq. It is hard to imagine anything else that better meets the definition of “active service in the armed service” than serving abroad in active combat. And the parties agree he gets 5:1 credit for his time as an enlisted member of the National Guard, which includes his in-year trainings. That must be right because if that is not “national guard service,” nothing is. *See Bramwell*. However, Mr. Pitta argues ADT is different and should be considered “active service” for purposes of § 4(1)(h). To narrow the issue down a bit, I am focused on his officer training, which was pursuant to Title 32.

Mr. Pitta makes a compelling argument for 1:1 credit for ATD. He notes that while § 4(1)(h) does not define “active service,” Title 10 of the U.S. Code does. Title 10, entitled “Armed Forces,” contains a number of definitions and provisions concerning the military and military service. As pertinent here, under Title 10, active service means service in “active duty” or “full-time National Guard duty.” 10 U.S.C. § 101(d)(3). Full-time National Guard duty, in turn, means training or other duties pursuant to Title 32. *Id.* at § 101(d)(5). Thus, Mr. Pitta’s Title 32 National Guard service would be considered “active service” under the federal code. While this case is about state benefits, not federal ones, the federal definitions still provide some indication of how the relevant terms are understood. And they do not contain the type of self-limiting language found in Clause 43.

Beyond the federal definitions, there are other reasons Mr. Pitta’s Title 32 service should be credited at a 1:1 ratio. It was training, but it was different than his basic and job training in a few ways. Because it was pursuant to Title 32, it is considered “full time” National Guard duty. G.L. c. 4, § 7, cl. 43. The record here supports this interpretation. His Title 32 service was full-time in that it was all he did for one year. Meanwhile, his non-combat, non-ADT National Guard service was part-time; he only trained a few times a year and the rest of the time, though enlisted in the National Guard, he lived a private life.

Additionally, Mr. Pitta clearly receives 1:1 credit for his wartime service in Iraq. While serving in Iraq he was still an enlisted member of the National Guard, but even the Board agrees that was not 5:1 “national guard service.”¹¹ This means not everything Mr. Pitta did as a

¹¹ It is worth noting that § 4(1)(h) uses the term active service in the “armed services” and not “armed forces.” In Clause 43, “armed forces” includes the “army, navy marine corps, air force and coast guard.” Use of the term “armed services” may be one way the legislature

National Guard member is considered “national guard service,” even though he was only ever a member of the National Guard. There is no meaningful distinction I can find between his Title 10 and Title 32 service other than one was for combat and one was training for combat. But both required activation by the head of an executive (a Governor or the President); both were full-time, requiring that Mr. Pitta leave his civilian life, e.g. he could not work a private job; and both required that he live on a base full-time.

Putting this all together, the legislature intended to credit “active service in the armed services” more than “national guard service.” Though not defined, “national guard service” must include, at a minimum, the regular obligations of a National Guard member—being a member and participating in the in-year trainings. Though not defined, “active service” must include, at a minimum, wartime service, even as a member of the National Guard. His Title 32 service is much more like his wartime service than his guard service and therefore should be considered “active service” entitled to 1:1 credit. This interpretation gives the statute its intended effect and is sensible and logical. *Adamowicz, supra*.

Mr. Pitta’s basic and job training is also entitled to credit. Because giving Mr. Pitta 1:1 credit for his Title 32 service gives him more than enough credit to purchase the maximum four years, I need not decide whether basic and job training would warrant 1:1 or 5:1 credit.¹²

intended to signal it was broadening the type of service eligible for 1:1 credit to some national guard and reserve service.

¹² On balance, that is a close call based on the record in this case. A different service member in a different case may provide more or different evidence to show that training should be considered “active service in the armed services.” Accordingly, there is no need to say anything definitively about it now.

CONCLUSION AND ORDER

So much of the Board's decision denying Mr. Pitta credit for his ADT is *vacated* and remanded so the Board can recalculate his eligible time in accordance with this decision.

SO ORDERED.
DIVISION OF ADMINISTRATIVE LAW APPEALS

Date: April 24, 2026

Eric Tennen

Eric Tennen
Administrative Magistrate