

COMMONWEALTH OF MASSACHUSETTS  
Division of Administrative Law Appeals

---

PATRICK PURCELL  
DAVID CIALDEA  
*Petitioners*

Docket No. CR-20-0383

Docket No. CR-20-0411

v.

Date: September 29, 2023

WORCESTER REGIONAL  
RETIREMENT SYSTEM,  
*Respondent*

---

**Appearance for Petitioners:**

Patrick Purcell, *pro se*

David Cialdea, *pro se*

**Appearance for Respondent:**

Katherine Hesse, Esq.

**Administrative Magistrate:**

Eric Tennen

**SUMMARY OF DECISION**

The Petitioners were call firefighters but were never appointed to a permanent position in their respective towns. Accordingly, they are not entitled to the enhanced credit under G.L. c. 32, § 4(2). The Worcester Regional Retirement System erroneously gave the Petitioners this credit. Nevertheless, the retirement statute requires it to fix its mistake. G.L. c. 32, § 20(5)(c)(2).

**DECISION**

Pursuant to G.L. c. 32, § 16(4), Petitioners, David Cialdea and Patrick Purcell, timely appeal decisions by the Worcester Regional Retirement System (“WRRS”) denying them credit for prior service as call firefighters. DALA consolidated the matters and 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 Board submitted a consolidated response on July 31, 2023 addressing both cases. Mr. Cialdea submitted a reply on September 8, 2023. Mr. Purcell did not submit a reply. No parties filed any new exhibits. I therefore mark WRRS's denial letter to Mr. Purcell as Pu-1 and his notice of appeal as Pu-2; I mark WRRS's denial letter to Mr. Cialdea as Ci-1 and his notice of appeal as Ci-2. I treat the substance of Petitioners' correspondence as pleadings articulating their positions.

### **FINDINGS OF FACT**

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

1. The Petitioner, Mr. Purcell, was a call firefighter with the town of Oxford. He was never appointed a permanent member of the Oxford fire department. (Ex. Pu-1.)
2. The Petitioner, Mr. Cialdea, was a call firefighter with the town of Upton. He was never appointed a permanent member of the Upton fire department. (Ex. Ci-1.)
3. The WRRS originally credited each Petitioner for their service as call firefighters in their respective towns. However, after the Supreme Judicial Court decided *Plymouth Ret. Bd. v. CRAB*, 483 Mass. 600 (2019), the WRRS rescinded this credit as to each Petitioner. (Exs. Pu-1 & Ci-1.)
4. This resulted in a loss of substantial creditable service. Mr. Purcell's service was reduced by two and a half years; Mr. Cialdea's was reduced by almost three years. (Exs. Pu-1; Ci-1.)
5. It also appears that before the credit was rescinded, Mr. Cialdea had over 10 years of creditable service and was thus eligible for a retirement allowance. After his credit was reduced, he had less than 10 years of creditable service and was no longer eligible for a retirement allowance. (Ex. Ci-1.)

## DISCUSSION

The Petitioners have “the burden of proving by a preponderance of the evidence that the [Retirement Board] has applied the law and[/]or its regulations incorrectly or has been culpable in perpetrating a correctible administrative mistake.” *Patterson v. State Bd. of Ret.*, CR-20-0324, 2023 WL 415581 (DALA Jan 20, 2023), quoting *Byrne v. Mass. Teachers’ Ret. Sys.*, CR-15-609 (DALA Jan. 26, 2018).

The retirement allowance of a Massachusetts public employee is based in part on the duration of his or her “creditable service.” See G.L. c. 32, § 5(2). Normally, creditable service spans employees’ work for government units beginning when they became members of a state or local retirement system. See G.L. c. 32, § 4(1)(a). In some cases, the employee is entitled to purchase previous service that was not originally treated as creditable service. See generally G.L. c. 32, § 4. And in some of those cases, certain types of prior service are entitled to an “enhanced credit.” *Shailor v. Bristol Cty. Ret. Bd.*, CR-20-0343, 2023 WL 2535786 (DALA Mar. 10, 2023); G.L. c. 32, § 4(2)(b).

For a call firefighter “the board shall credit as full-time service not to exceed a maximum of five years that period of time during which [he] was on his respective list and was eligible for assignment to duty subsequent to his appointment[.]” *Id.* However, one prerequisite to this credit is that the call firefighters must have been “subsequently appointed permanent members of the fire department.” *Id.*<sup>1</sup> Those who were not so appointed are not eligible for the enhanced credit. See *McMorrow v. Worcester Reg. Ret. Sys.*, CR-21-0580, 2023 WL 3042653 (DALA Apr. 14,

---

<sup>1</sup> The other prerequisite, not at issue here, is that, after July 1, 2009, the member must have received compensation of more than \$5,000.00 in any year he seeks this credit. See G.L. c. 32, § 4(1)(o); *Plymouth Ret. Bd. vs. CRAB*, 483 Mass. 600 (2019) (noting that § 4(1)(o) applies to call firefighter service granted under G.L. c. 32, § 4(2)(b)).

2023); *Howland v. Bristol Cty. Ret. Bd.*, CR-18-0612, 2021 WL 9697047 (DALA Oct. 22, 2021); *Correia v. Fairhaven Ret. Bd.*, CR-17-062 (DALA Aug. 27, 2021).<sup>2</sup>

The WRRS originally believed each Petitioner was eligible for this enhanced credit. That was incorrect because, as noted, neither Petitioner was appointed as a permanent member of their departments. The Petitioners do not dispute these facts; instead, they generally argue that the Board's mistake, and correction of that mistake, is unfair and has caused them each an undue hardship. I do not doubt the Board's actions negatively impacted the Petitioners, especially coming so long after the Board had granted them credit. However, the Board is required to correct these mistakes. *See* G.L. c. 32, § 20(5)(c)(2); *McMorrow*; *Howland*; *Correia*. In denying relief, DALA is bound by the statute as written. *See McMorrow*, citing *Bristol County Ret. Bd. v. CRAB*, 65 Mass. App. Ct. 443, 451-52 (2006) (DALA lacks the power to create equitable remedies).

### CONCLUSION AND ORDER

Accordingly, WRRS's decision denying the Petitioners credit for their prior service as call firefighters is **affirmed**.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Eric Tennen*

---

Eric Tennen  
Administrative Magistrate

---

<sup>2</sup> However, a town may waive this requirement under G.L. c. 32, § 4(2)(b ½). Neither town did so here, and the Petitioners do not argue otherwise.