

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Warren Rodgers,**  
Petitioner

v.

Docket No. CR-21-0292

**Massachusetts Teachers’  
Retirement System,**  
Respondent

**Appearance for Petitioner:**

Warren Rodgers, *pro se*

**Appearance for Respondent:**

Lori Curtis Krusell, Esq.  
Massachusetts Teachers’ Retirement System  
500 Rutherford Avenue, Suite 210  
Charlestown, MA 02129-1628

**Administrative Magistrate:**

Melinda E. Troy, Esq.

**SUMMARY OF DECISION**

MTRS’ decision to reduce the Petitioner’s retirement allowance because it determined that he did not qualify for a veterans’ allowance pursuant to G.L. c. 32, § 5(2)(b), is affirmed because the record establishes that this service was “active duty for training,” which is specifically excluded from the definition of “active service in the armed forces.”

**DECISION**

This appeal concerns the determination by the Massachusetts Teachers’ Retirement System (“MTRS”) to reduce a retired member’s allowance because it determined that his benefit should not have included a veterans’ allowance pursuant to G.L. c. 32, § 5(2)(b). The Petitioner

retired in 2015 and his benefit calculation originally included this allowance. In 2021, the MTRS determined that he did not qualify as a “veteran” as that term is defined in G.L. c. 32 and reduced his retirement allowance by the amount of the veterans’ allowance. The MTRS also recouped the funds that had been paid to him as a veterans’ allowance from the date of his retirement allowance through the time his retirement allowance was adjusted.

I held a hearing on September 12, 2023, at DALA’s offices in Malden, MA which I digitally recorded. The MTRS called no witnesses. Mr. Rodgers 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 13 exhibits into the record. They are described in an addendum at the end of this decision. Mr. Rodgers stated his argument on the record and did not submit a written closing memorandum. I have marked for identification the memoranda submitted by the parties. The Petitioner’s pre-hearing memorandum is marked “A” for identification, the Respondent’s pre-hearing memorandum is marked “B” for identification and the Respondent’s Closing Memorandum is marked “C” for identification. The MTRS submitted its written closing memorandum under cover letter dated October 25, 2023, thereby closing the record.

For the reasons set forth below, I am affirming the MTRS’s decision to recalculate the Petitioner’s retirement allowance based on its determination that he did not qualify for the veterans’ allowance outlined in G.L. c. 32, § 5(2)(b).

### **FINDINGS OF FACT**

1. The Petitioner, Warren Rodgers, began teaching in the 1990s at the Diman Regional Vocational School, where he was a plumbing instructor. He retired effective June 30,

2015. (Exhibit 5; Testimony, Rodgers.)<sup>1</sup>
2. When Mr. Rodgers retired, he submitted a DD-214, which is a document confirming an individual's military service. (Exhibit 2.)
  3. The Petitioner's DD-214 states that his military service lasted from March 13, 1971 to July 10, 1971 and states, in pertinent part, that Mr. Rodgers was in the "USNR", or U.S. Naval Reserve. The document states that Mr. Rodgers was first ordered to and then "RELEASED FROM ACDUTRA". The listed "Reason and Authority" is "Completed their statutory military obligated service." This represented 3 months and 28 days of service. *Id.*
  4. The MTRS originally included the veterans' allowance outlined in G.L. c. 32, § 5(2)(b)<sup>2</sup> in calculating his retirement allowance. (Stipulation of the parties.)
  5. In or around 2020, Mr. Rodgers was conferring with the MTRS staff concerning his veterans' status. Under cover letter dated September 1, 2020, Mr. Rodgers forwarded MTRS staff a letter from the Department of the Navy dated July 23, 2020 concerning the nature of his military service. (Exhibit 9.)
  6. The July 2020 letter states, in pertinent part, "This letter is in response to your request

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<sup>1</sup> In or around 2015, the Petitioner sought an adjustment to his retirement allowance because he had received longevity payments. The MTRS originally denied that request. Mr. Rodgers appealed that determination and the matter was assigned Docket Number CR-15-185. MTRS ultimately determined that the amounts qualified as "regular compensation" for retirement purposes and adjusted Mr. Rodgers' retirement allowance to include them. (Exhibit 11.) DALA dismissed CR-15-185 as moot. Notwithstanding the document in the record related to that case, the parties agree that there are no issues related to this determination that are currently before DALA.

<sup>2</sup> General Laws c. 32, § 5(2)(b) states, "[a]ny member of Group 1 or Group 2 or Group 4, who is a veteran as defined in section one, shall receive an additional yearly retirement allowance of fifteen dollars for each year of creditable service or fraction thereof; provided, that the total amount of said additional retirement allowance shall not exceed three hundred dollars in any case.

to have block 11a of your DD form 214 changed from ‘ACDUTRA’ to ‘ACTIVE DUTY’...the governing instruction for preparation of the DD Form 214, when a member is released from *active duty for a period of instruction*, the correct entry in block 11a is ACDUTRA. The fact that you were issued a DD Form 214 is evidence of your service in the Navy on active duty. Therefore, your request cannot be approved. I regret my response could not be more favorable.” (Exhibit 10.) (Emphasis added.)

7. The “Abstract of Service and Medical History” that the Petitioner submitted states, in pertinent part in the “remarks” section that from March 14, 1971 to June 2, 1971 the Petitioner was at “CRUIT TRA,” stationed at “NTC, RTC Gt Lks, Ill.”<sup>3</sup>, and from June 4, 1971 to July 10, 1971, the Petitioner was stationed on the U.S.S. Purdy. The remarks for that service include the word “DUTY,” which is then crossed out, and the document states, “Term Ac Du for Tra.” It further states, “Health record closed this date by reason of release from active duty.” (Exhibit 6.)
8. Subsequently, by letter dated July 15, 2021, the MTRS notified Mr. Rodgers that he had been granted this veterans’ allowance in error because his DD-214 stated that his military service from March 13, 1971 to July 10, 1971 was active duty training, which does not qualify as veterans’ service under applicable law. MTRS reduced the Petitioner’s monthly retirement allowance as a result, and recouped \$825.00 from him, representing the amount of the allowance that was paid to him since he retired. (The exact date that this was accomplished is not clear from this record, but the

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<sup>3</sup> Great Lakes, IL is a Naval training installation. <https://cnrma.cnmc.navy.mil/installations/NAVSTA-Great-Lakes/>. “NTC” appears to stand for “Naval Training Center”, and “RTC” stands for “Recruit Training Center.”

parties do not dispute what transpired.) (Exhibit 7.)

9. By letter dated July 18, 2021, received July 21, 2021, Mr. Rodgers timely appealed the MTRS decision to the Division of Administrative Law Appeals (“DALA”).

(Exhibit 8.)

10. DALA issued an Order to Show Cause dated July 20, 2022, to which Mr. Rodgers responded, and the matter proceeded to a hearing.

## DISCUSSION

### **Whether the Petitioner qualifies as a “veteran” as that term is used in G.L. c. 32**

General Laws c. 32, § 5(2)(b) states, “[a]ny member of Group 1 or Group 2 or Group 4, who is a veteran as defined in section one, shall receive an additional yearly retirement allowance of fifteen dollars for each year of creditable service or fraction thereof; provided, that the total amount of said additional retirement allowance shall not exceed three hundred dollars in any case.” General Laws c. 32, § 1, in turn defines “veteran,” in relevant part, as “any person who...is a veteran as defined in clause Forty-third of section seven of chapter four.” General Laws c. 4, § 7, cl. 43 states,

“Veteran” shall mean (1) any person, (a) whose last discharge or release from his wartime service as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States, or on full time national guard duty under Titles 10 or 32 of the United States Code or under sections 38, 40 and 41 of chapter 33 for not less than 90 days *active service*, at least 1 day of which was for wartime service.

(Emphasis added.) It goes on to state a specific exclusion relevant here. The law also states, “‘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.” (Emphasis added.)

The evidence shows that Mr. Rodgers’ service for three months and 28 days was active

duty for training and therefore he was never eligible for the veterans' allowance originally awarded to him. The Legislature's intent is "found most obviously in the words of the law itself, interpreted according to their ordinary and approved usage." *Suffolk Constr. Co. v. Division of Capital Asset Mgmt.*, 449 Mass. 444, 454 (2007). 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). Use of the word "shall" in a statute means that the action contemplated by the Legislature is mandatory. *Hashimi v. Kalil*, 388 Mass. 607, 609 (1983) ("shall" is interpreted as imposing a mandatory or imperative obligation.) Here, although the relevant statutory language is phrased as a prohibition, its meaning is equally clear. Use of the phrase "shall not" in G.L. c. 4, § 7, cl. 43, excludes active duty for training from the definition of "veteran."

The evidence shows that Mr. Rodgers' service was active duty for training in the U.S. Naval Reserve because his DD-214 and DD-215 list as the "Department, Component and Branch or Class" as "USNR," the U.S. Naval Reserve. The DD-214 states that Mr. Rodgers was first ordered to and then "RELEASED FROM ACDUTRA." The listed "Reason and Authority" is "Completed their statutory military obligated service." The letter from the Department of the Navy dated July 23, 2020 concerning the nature of his military service states, in pertinent part, "This letter is in response to your request to have block 11a of your DD form 214 changed from 'ACDUTRA' to 'ACTIVE DUTY'...the governing instruction for preparation of the DD Form 214, when a member is released from *active duty for a period of instruction*, the correct entry in block 11a is ACDUTRA. The fact that you were issued a DD Form 214 is evidence of your service in the Navy on active duty. Therefore, your request cannot be approved. I regret my response could not be more favorable." (Emphasis added.)

Other evidence in the record supports the conclusion that this period from March to July 1971 was a period of training for Mr. Rodgers. The “Abstract of Service and Medical History” that the Petitioner submitted states, in pertinent part in the “remarks” section that from March 14, 1971 to June 2, 1971 the Petitioner was at “CRUIT TRA,” stationed at “NTC, RTC Gt Lks, Ill.,” and from June 4, 1971 to July 10, 1971, the Petitioner was stationed on the U.S.S. Purdy. The remarks for that service include the word “DUTY,” which is then crossed out, and the document states, “Term Ac Du for Tra” and states the date that Mr. Rodgers separated from service as July 10, 1971. It further states, “Health record closed this date by reason of release from active duty.”

Mr. Rodgers primarily argues that his service was active service<sup>4</sup>, which should therefore be sufficient to entitle him to the veterans’ allowance. He urges that DALA read his DD-215 in isolation, because of its statement that he accrued three months and 28 days of “active service.” He also urges DALA to read one sentence of the July 2020 letter in order to provide him with the result he seeks, because he focuses only on the sentence, “[t]he fact that you were issued a DD Form 214 is evidence of your service in the Navy on active duty.” His argument is unavailing, because G.L. c. 4, § 7, cl. 43 has specific language which, for purposes of this definition, excludes active duty for training, the type of active duty in which he was engaged, from the definition of “veteran.” The letter from the Department of the Navy uses the phrase “active duty” twice, making it clear that the Petitioner’s service was active duty for a period of

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<sup>4</sup> The term “active service” is not defined in the General Laws. However, it has been interpreted by CRAB to include, “...full-time occupation as a member of one of the armed services with actual deployment or participation in a military mission beyond enlistment and training.” *Kelly v. Massachusetts Teachers’ Retirement System*, CR-11-636 (DALA decision June 22, 2012; affirmed by CRAB November 16, 2012). I find that the Petitioner’s service was active duty for training, which is specifically excluded from the definition of “active service.” However, even if I were to consider this definition of “active service,” Mr. Rodgers’ service still would not qualify.

instruction or training. The fact that the Department of the Navy may consider Active Duty for Training as “active duty” may entitle Mr. Rodgers to federal or other benefits, but that does not mean that he is eligible for the veterans’ allowance permitted under the applicable state statutes. *Lynch v. Holyoke Retirement Board*, CR-19-0097 (DALA 2021) (eligibility for federal veterans’ benefits does not necessarily make one eligible for the separate Massachusetts veterans’ retirement benefits.) Read in its entirety, the July 2020 letter makes clear that the service that Mr. Rodgers performed in 1971 was active duty for a period of instruction, and that the DD-214 designation “ACDUTRA” was accurate (because the Department of the Navy ultimately determined it would not be appropriate to change it). The other evidence in the record reinforces this conclusion. Unfortunately for the Petitioner, applicable Massachusetts law specifically excludes this type of service from the definition of “veteran” for purposes of the veterans’ retirement benefit. He was not and is not eligible for the veterans’ allowance contemplated by G.L. c. 32, § 5(2)(b).

**Whether the MTRS properly adjusted the Petitioner’s benefit when it determined that he was not a “veteran” as that term is defined in G.L. c. 32**

When the MTRS discovered that Mr. Rodgers had been paid a veterans’ allowance to which he was not entitled, 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 June 30, 2015. In his argument, Mr. Rodgers implied that the MTRS’s actions may have been motivated by the fact that he prevailed in his earlier appeal, Docket Number CR-15-185. To the contrary, MTRS was required to correct the error it made in paying Mr. Rodgers a veterans’ allowance. 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 again indicated by the use of the word “shall,” G.L. c. 32, § 20(5)(c)(2) required the MTRS 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 MTRS failed to correct the amount paid to Mr. Rodgers, it would have provided Mr. Rodgers 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.

(Internal citations omitted.) Here, Mr. Rodgers is similarly entitled to only the benefit that was authorized by law- no more, no less. The MTRS acted properly in this circumstance by ceasing

to pay him the veterans' allowance, reducing his resulting retirement allowance and recouping the overpayment made to him.

SO ORDERED,

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Melinda E. Troy*

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Melinda E. Troy  
Administrative Magistrate

Dated: June 28, 2024

Exhibit List

1. "Correction to Form DD-214" submitted by the Petitioner.
2. Petitioner's Form DD-214.
3. "Notice of Estimated Retirement Benefit" from the MTRS to the Petitioner dated May 29, 2015.
4. MTRS letter to the Petitioner dated March 12, 2018 informing him that he did not qualify for the veterans' allowance that had previously been included in the calculation of his retirement allowance.
5. "Notice of Estimated Retirement Benefit" issued by the MTRS to the Petitioner, dated March 5, 2018.
6. "Abstract of Service and Medical History" submitted by the Petitioner.
7. MTRS letter to the Petitioner dated July 15, 2018.
8. Petitioner's letter of appeal dated July 18, 2018.
9. Letter from the Petitioner to the MTRS dated September 1, 2020.
10. Letter to the Petitioner from the Department of the Navy dated July 23, 2020.

11. Notice of underpayment from the MTRS to the Petitioner dated February 27, 2018 related to the Petitioner's receipt of longevity payments.
12. Copy of Petitioner's diploma from Fitchburg State College dated January 29, 2010.
13. Copy of the Petitioner's Massachusetts Drivers' License which states that he is a "veteran."