

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

MICHAEL RYAN	:	Docket No. CR-21-0230
<i>Petitioner</i>	:	
	:	Date: January 12, 2024
v.	:	
	:	
WAKEFIELD RETIREMENT	:	
BOARD,	:	
<i>Respondent</i>	:	

Appearance for Petitioner:

Michael Ryan, *pro se*

Appearance for Respondent:

Michael Sacco, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner received five years “enhanced credit” (creditable service) under G.L. c. 32, § 4(2)(b) for his prior service as a reserve police officer in Woburn. He now seeks additional enhanced credit for his time as a reserve police officer in Boxborough. He is not entitled to it. He was unable to produce original documentation of his hours worked or wages earned. Accordingly, the Wakefield Retirement Board was within its discretion in denying his application. And in any event, he is not entitled to more than five years enhanced credit under § 4(2)(b) for all his prior service, even if he is seeking to purchase service from different systems. That is, § 4(2)(b) does not allow up to five years enhanced credit for each system where a member worked; it allows five years enhanced credit in total.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, timely appeals a decision by the Wakefield Retirement Board (“WRB” or “the Board”) denying his request to purchase prior creditable

service as a reserve police officer in Boxborough. This is the Petitioner’s second appeal to DALA.¹

The parties submitted a joint pre-hearing memorandum with various stipulated facts. I conducted a hearing via the Webex platform on September 6, 2023. The Petitioner testified on his own behalf; the Board did not present any witnesses. I admitted Exhibits 1–12 into evidence without objection.

Following the hearing in September 2023, I left the record open to give the Petitioner additional time to gather and provide as much documentation as possible regarding his hours worked in Boxborough. Board counsel agreed to present whatever the Petitioner submitted to the Board. However, the Petitioner was unable to find any new evidence. The parties submitted closing briefs on November 20, 2023. The Board also submitted three more exhibits, which I now enter into evidence as Exhibits 13-15.

FINDINGS OF FACT

1. In 2012, the Petitioner was appointed a full-time police officer in the Town of Wakefield. He simultaneously joined the Wakefield Retirement System. (Stipulated facts.)
2. His first appeal, *Ryan I*, related to prior work he performed as a reserve police officer in Woburn.
3. He served as a reserve police officer in Woburn between 2002 and 2012. The ultimate resolution to his first appeal was that the Petitioner received five years of creditable service pursuant to the enhanced credit under G.L. c. 32, § 4(2)(b); he then received “day

¹ The first case produced three decisions: an initial decision, an appeal to CRAB, and a remand decision. *See Ryan v. Woburn Ret. Bd., et al.*, CR-14-394 (DALA Nov. 25, 2014; CRAB Jul. 23, 2018; DALA Mar. 19, 2021) (collectively referred to as “*Ryan I*”).

for a day” credit (totaling one month) for his time beyond the five years. (Ex. 4; Stipulated facts). *See Ryan I*; G.L. c. 32, § 4(2)(b).

4. The Petitioner has paid for this service, and he has been credited with it. (Stipulated facts; Ex. 1.)
5. It turns out the Petitioner had other prior service as a reserve police officer. In 2001, he worked for the Town of Boxborough. (Stipulated facts.) This appeal deals only with this time.
6. His official job title was “Reserve Police Officer.” The job description explained that “a Reserve Police Officer is a part-time employee who has the same powers and authority as a Full-Time Police Officer when said reserve officer is on duty.” (Ex. 11.)
7. There is a dispute between the parties about whether there is enough documentation to establish how many hours the Petitioner worked for Boxborough and his rate of pay. Because the service is so old, there is very limited documentation. When the WRB reached out to Boxborough, the Boxborough town treasurer could not locate “exact hire and last date worked, hours or hourly wage.” He was only “able to locate [the Petitioner’s] earning by quarter and W2, for 2001.” (Ex. 6.)
8. A 2023 letter from a new town treasurer stated the Petitioner worked 121 hours at the rate of \$11 an hour in 2001. (Ex. 10.)
9. In a separate, later letter, she explained how she arrived at those figures:

In order to verify Michael Ryan, pay in 2001 I verify with the town Police department that Michael was a part time office and his rate was 11.00 an hour. I took his wage from his W-2 of 1330.72 divide it by 11.00 got 120.9 rounded the nearest whole number giving it 121 hours.

(Ex. 13.)²

² I quote the letter exactly as written, which includes some grammatical errors.

10. In 2014, the Petitioner discussed with someone from the WRB the possibility of purchasing his creditable service for his time in Boxborough. That request was “put on hold” until the Woburn matter was resolved. Once the Woburn matter was resolved by *Ryan I*, the WRB took up this request. (Ex. 2.)
11. In May 2021, the Board denied the request to purchase prior service for Boxborough. The letter explained the reason for the denial: “With respect to your Town of Boxborough employment as a police reserve officer, the Board voted to deny any makeup due to MGL c. 32, § 4(2)(b) which allows a Board to credit full time service not to exceed a maximum of five years during which a reserve police officer was on his respective list and eligible for assignment.” (Ex. 5.)
12. Following the Petitioner’s effort to obtain additional documentation about his hours and rate of pay, in November 2023, the Board again took up his case. In addition to the reasons for its first denial, it also voted to “not accept the documentation submitted by Michael Ryan/Town of Boxborough as sufficient evidence.” (Exs. 13-15.)

DISCUSSION

Purchases of prior creditable service from the same system to which a member belongs are governed by G.L. c 32, § 4(2)(c); purchases from a different system are governed by § 3(5). “Normally, members receive day-to-day credit for prior service. However, some jobs, like police officers, entitle members to more than day-to-day credit for prior service; thus, the term, “enhanced credit.” *Shailor v. Bristol Cty. Ret. Bd.*, CR-20-0343, 2023 WL 2535786 (DALA Mar. 10, 2023). “[F]or reserve or intermittent-police officers . . . ‘the board shall credit as full-time service not to exceed a maximum of five years that period of time during which a reserve or

permanent-intermittent police officer . . . was on his respective list and was eligible for assignment to duty subsequent to his appointment” *Id. quoting* G.L. c. 32, § 4(2)(b).

Additionally, boards have the option of adopting a section of the statute that allows credit beyond the five-year enhancement, specifically, “one day of full-time service each day in any year which is subsequent to the fifth year following said appointment and on which a [reserve police officer] was assigned to and actually performed duty as a [reserve police officer].” G.L. c. 32, § 4(2)(b). Woburn, for example, adopted this section of the statute in 1998. *Ryan I*. That is how the Petitioner received five years and one month of credit for his time in Woburn.

Both parties agree the issue here is entirely a legal one: whether the Petitioner is entitled to additional credit for his time in Boxborough and, if so, how much? Specifically, since he has already received an “enhanced credit” of five years under G.L. c. 32, § 4(2)(b) from Woburn in *Ryan I*, is he entitled to more “enhanced credit” from Boxborough?

1. Petitioner is not entitled to more than five years of the “enhanced credit.”

The Petitioner argues that § 4(2)(b) simply allows him to receive up to five years of the “enhanced credit” from every different town in which he served or, as he puts it, for every “employment situation.” Obviously, the Board disagrees, arguing the five-year cap applies to the totality of the member’s prior service.³

³ As noted below, the path to receiving prior credit for service from a different system flows through § 3(5). *Shailor*. And as I explain, the Petitioner is not entitled to purchase his Boxborough service under § 3(5). However, because *Shailor* is under appeal, I will address this argument in case *Shailor* is ultimately reversed. That is, if a member may purchase prior creditable service from a different system without having to meet the requirements of § 3(5), there is still a question of whether they can ever receive more than five years of enhanced credit.

Also, as board counsel candidly pointed out, credit under § 3(5) requires documentary evidence that a board must accept. But credit under § 4(2)(b) merely requires being on a “respective list and eligible for assignment.” There is no dispute the Petitioner meets that requirement in this case for his time in Boxborough. Thus, there is no evidentiary bar to credit under § 4(2)(b) in this case.

The Petitioner’s argument that he is entitled to more than five years of enhanced credit does not square neatly with the structure and plain language of the statute. The statute allows this credit for the period during which the member “was on [their] respective list and was eligible for assignment to duty subsequent to their appointment.” G.L. c. 32, § 4(2)(b). As the Board points out, it does not say the member is eligible for this credit while on a list “in the governmental unit.” If the Legislature intended to apply this credit for each unit where someone served, it could have said so.

But more to the point, the Legislature clearly explained how to credit time beyond the five-year enhanced credit—a member can also get day-for-day credit *if* a board adopts that portion of the statute. Therefore, a member can get the enhanced credit without a local board doing anything; and the board has no discretion but to give the enhanced credit for the first five years of qualifying time. However, it is up to the individual boards as to whether they want to give more than five years credit; if they do, it cannot be the enhanced credit but only day-for-day credit.

It would seem odd that the Legislature went out of its way to cap the enhanced credit, and precisely restrict credit beyond that, only to allow a few lucky members who served in different systems more than five years of the enhanced credit. “We must interpret the statute in a manner that ‘render[s] the legislation effective, consonant with reason and common sense’ and we will not construe a statute such that ‘the consequences ... are absurd or unreasonable.’”

Malloy v. Dept. of Correction, 487 Mass. 482, 496 (2021), *citations omitted*. In *Shailor*, I interpreted the statute so that members seeking the enhanced credit from a different system would be treated the same as members seeking credit from the same system. That same logic should apply here.

Take this case. The Petitioner himself worked as a reserve police officer in Woburn over the span of seven years. He received five years, enhanced creditable service for the first five years but only day-for-day credit for the next two (totaling one month). But under his theory, someone who worked the same number of hours and days, but did so for five years in one system and two years in another, would be entitled to seven years of creditable service. That is an arbitrary result based simply on where someone worked, not on the amount of time worked. A common sense reading of the § 4(2)(b) counsels against the Petitioner's interpretation.

2. Absent original documentation, the Board was within its discretion in denying credit for failing to provide sufficient evidence under § 3(5).

The Petitioner is seeking to purchase prior service from a different system. I recently wrote a decision on this same issue. *Shailor, supra*. Shailor was a police officer and member of the Bristol County Retirement System. Before that, he had been a reserve police officer in the Town of Rowley, which was part of the Essex Regional Retirement System. He applied to purchase his prior service in Rowley. The Bristol County Retirement Board there argued, and I agreed, that because the Petitioner was seeking credit for service in a different system, G.L. c. 32, § 3(5) governed. The analysis hinged on whether the position of "reserve police officer" was considered a "temporary, provisional, or substitute position." I held that it was. Thus, Shailor was "entitled to purchase [his prior service] under § 3(5)" and a "reserve police officer purchasing prior service under § 3(5) is still entitled to the enhanced credit under § 4(2)(b)." *Id.* I see no reason why the analysis here should stray from *Shailor* since the Petitioner is seeking to purchase his prior service as a reserve police officer from a different system.

But purchases under § 3(5) require certain documentation:

G.L. c. 32, § 3(5) requires [the member] "furnish the board with such information as it shall require to determine the amount to be paid and the credit to be allowed under this subdivision." G.L. c. 32, § 20(5)(c)(1) further provides, in pertinent parts, that

“[w]henver any such board shall find it impossible or impracticable to consult an original record to determine the date of birth, length of service, amount of regular compensation or other pertinent fact with regard to any member, it may, subject to the approval of the actuary, use estimates thereof on any basis which in its judgment is fair and just.”

Lydon v. Quincy Ret. Bd., CR-17-689/18-275, *2 (CRAB Jan. 8, 2020). Further, absent original records, the Board may reject the purchase:

While the statute allows the [Board] to use estimates of dates of service and regular compensation subject to the actuary’s approval, it does not require the [Board] to do so. The statute is permissive and not mandatory by use of the word “may” in its plain language.

The statutory language in G.L. c. 32, § 20(5)(c)(1) also gives the [Board] discretion to determine the information that it finds to be satisfactory to calculate the amount to be paid and the credit to be allowed. Here, the [Board] has determined that [the Petitioner] has not provided sufficient documentation to allow it to properly calculate his creditable service and the cost to purchase it. The [Board] has the discretion to determine the sufficiency of evidence when original documents are unavailable, and CRAB must defer to its decision in the absence of an abuse of discretion.

Id.; see *Filkins v. State Bd. of Ret.*, CR-11-715, *2 (DALA Jan. 8, 2020.); *Tawse v. Beverly Ret. Bd.*, CR-05-958, 2006 WL 4211646 (DALA Oct. 6, 2006) (“Although the Beverly Retirement Board would have discretion to estimate the amount of creditable service of Ms. Tawse for years other than 1976, it is not required to exercise that discretion”).

The problem for the Petitioner is that the WRB did not accept the documentation he provided as sufficient evidence of his hours and rate of pay. Despite his best effort, the Petitioner was unable to secure any original documentation regarding his service in Boxborough. The Board required more than quarterly earnings, a W-2, and a letter from the town treasurer estimating his rate of pay and hours worked based on those documents. The Board could have accepted this evidence. But it chose, in its discretion, not to. I cannot say it abused its discretion.

Even if the Board had accepted the Petitioner’s evidence, he would be precluded from purchasing his prior service under § 3(5). As noted below, a member is not entitled to more than

a total of five years of enhanced credit. Having already received that from Woburn, the Petitioner would only be entitled to day-for-day credit, but only if the WRB adopted that portion of the statute. It had not adopted it when the Petitioner served in Boxborough nor when he requested to purchase his service. Even though WRB later adopted a regulation, it does not apply to this case. Generally, “[t]he applicable regulations are those in effect at the time of [a Petitioner’s] application and the [Board’s] decision.” *Kalu v. Boston Ret. Bd.*, 90 Mass. App. Ct. 501, 505 n. 8 (2016). “[R]egulatory changes of substance apply only to events that occur after the change’s effective date.” *Figueroa v. Director of Dept. of Labor & Workforce Development*, 54 Mass. App. Ct. 64, 70 (2002).⁴

CONCLUSION AND ORDER

The WRB’s decision denying the Petitioner his application to purchase his prior service with Boxborough is **affirmed**.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

⁴ The regulation adopted in July 2023 reads as follows:

Any service that so qualifies for purchase shall be prorated based on 150 hours being the equivalent of 1 month of service. It shall be the responsibility of the member to obtain, and provide to the Board, verification of this past service rendered, including but not limited to payroll records indicating the amount of compensation received and number of hours worked and the classification of said employment.

Wakefield Supplemental Regulation, July 10, 2023 (available at: <https://www.mass.gov/info-details/wakefield-retirement-board-supplemental-regulations>). But even if this regulation applied here, the Petitioner would not qualify to purchase his service under it. The regulation still requires production of payroll records verifying past service which, as noted, the Petitioner was unable to accomplish.