

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Debra Sheehan,
Petitioner

v.

Docket No. CR-22-0221

Beverly Retirement Board

And

Massachusetts' Teachers' Retirement System,
Respondents

Appearance for Petitioner:

Jesse R. Gibbings, Esq.

Appearance for Respondent Beverly Retirement Board:

Joseph Kenyon, Esq.

Appearance for Respondent Massachusetts Teachers' Retirement System:

Ashley Freeman, Esq.

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The Petitioner was originally a member of the Beverly Retirement Board ("BRB"), but was transferred in error to the Massachusetts Teachers' Retirement System ("MTRS"). About sixteen years later, this mistake was discovered, and the Petitioner was transferred back to membership in the BRB. Under the BRB's regulations, the Petitioner would have been entitled to receive ten years of creditable service had she been enrolled in the BRB during the sixteen years she was enrolled in the MTRS. The MTRS has accepted liability only for the creditable service to which the Petitioner would be entitled under its own regulations, or about six years. The Petitioner has asked the BRB for the full ten years of creditable service to which she would have been entitled as a member of the BRB. The BRB denied that request and argues on appeal that it is not required to grant the full ten

years of creditable service because the MTRS and the City of Beverly are responsible for the Petitioner's erroneous enrollment in the MTRS and because the MTRS has not accepted liability for the full ten years.

The BRB's decision is reversed. The question of fault is irrelevant here. The BRB must correct its records and return the Petitioner to the position she would have occupied had she not been erroneously enrolled in the MTRS, regardless of which entity is responsible for the original mistake. Moreover, the BRB's obligation to make this correction is not contingent upon whether the MTRS accepts liability for the full ten years of creditable service. The relative share of liability must be determined, in the first instance, through Chapter 32's procedures for determining inter-system liability. The dispute between the BRB and the MTRS is not ripe for adjudication in this appeal.

DECISION

The Petitioner, Debra Sheehan, appeals the decision of the Beverly Retirement Board ("BRB") to deny her request for ten years of creditable service for the period of November 30, 2004 through October 29, 2020, during which time she had been enrolled in error in the Massachusetts Teachers' Retirement System ("MTRS"). On October 14, 2022, Ms. Sheehan's motion to join the MTRS as a necessary party was allowed. On June 5, 2024, Ms. Sheehan's assented-to motion to waive a hearing and proceed on written submissions pursuant to 801 CMR 1.01(10)(c) was allowed.

I admit into evidence the parties' agreed upon statement of facts, which will be cited by paragraph number as AF 1 – AF 16. I also admit into evidence the parties' agreed upon exhibits: Exhibit 1 – Exhibit 16. On July 10, 2024, Ms. Sheehan and the BRB submitted memoranda, whereupon the record was closed. The MTRS rested on its portion of the Joint Pre-Hearing Memorandum.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Sheehan is a physical therapy assistant with the Beverly Public Schools

- (“BPS”). She was hired by BPS on October 1, 2003. She has worked for BPS from October 2003 until June 2019, from September 2019 until June 2020, and from September 2020 until the present day. (AF 1).
2. For the entirety of her tenure with BPS, Ms. Sheehan has always worked a part-time schedule of 60% of the week. (AF 2).
 3. Starting in October 2003, Ms. Sheehan became a member of the Beverly Retirement System (“BRS”), which is operated by the BRB. (AF 3)
 4. On November 14, 2004, Ms. Sheehan was enrolled into the MTRS. (AF 4; Exhibit 6).
 5. On February 18, 2005, the Massachusetts Teachers’ Retirement Board (“MTRB”) requested that the BRB transfer Ms. Sheehan's accumulated total deductions. (AF 5; Exhibit 3).
 6. On March 28, 2005, the BRB complied with the MTRB’s request and transferred Ms. Sheehan’s deductions to the MTRS. (AF 6; Exhibit 2).
 7. In November 2020, the MTRB recognized that Ms. Sheehan had been mistakenly enrolled in the MTRS and transferred her back to the BRS. (AF 7; Exhibit 9).
 8. The MTRB accepts liability for Ms. Sheehan’s service from November 2004 until November 2020. (AF 8).¹
 9. Pursuant to its own regulations, the MTRB granted 60% creditable service for the period between September 2010 and November 2020 because Ms.

¹ In other words, the MTRB agrees that the MTRS will bear financial responsibility for the portion of Ms. Sheehan’s pension benefit attributable to her service from November 2004 until November 2020.

Sheehan worked 60% of a full-time schedule. (AF 9; Exhibit 4).

10. The BRB's regulations provide that "[f]or a member in service who is employed in a part-time capacity through his/her entire career while an employee of the city of Beverly, he/she will receive one year of creditable service for each full calendar year in which the employee is receiving regular compensation for said service." (AF 10; Exhibit 12).
11. Under the BRB regulations, Ms. Sheehan would have been credited with 10 years of creditable service for the period between September 2010 and November 2020 ("the period in question") if she had not been mistakenly transferred to the MTRS. (AF 11).
12. On March 17, 2022, the BRB informed Ms. Sheehan that the BRB is only able to accept the creditable service that the MTRS had transferred based on its 60% calculation (6 years). The BRB added Ms. Sheehan's request to the agenda for the BRB's next scheduled meeting on March 31, 2022. (AF 12; Exhibit 12).
13. On May 26, 2022, Ms. Sheehan appeared in front of the BRB to request that she be credited with the full 10 years of creditable service for the period in question.
14. On May 31, 2022, the BRB denied Ms. Sheehan's request. (AF 14; Exhibit 11).
15. On June 2, 2022, Ms. Sheehan timely appealed to the Division of Administrative Law Appeals ("DALA"). (AF 15).

CONCLUSION AND ORDER

The parties all agree that Ms. Sheehan's enrollment in the MTRS was made in error and that had she remained a member of the BRB during the period in question she would have been entitled to ten years of creditable service. Nor does there appear to be any actual disagreement among the parties that Ms. Sheehan's erroneous enrollment in the MTRS requires correction so that she is placed in the position she would have occupied were it not for this error.

This common ground is consistent with Chapter 32's directive that retirement boards correct errors that affect a member's benefits. G.L. 32, § 20(5)(c)(2), provides:

When an error exists in the records maintained by the system or an error is made in computing a benefit and, as a result, a member or beneficiary receives from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct or had the error not been made, the records or error shall be corrected and as far as practicable, and 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. If it is determined that a member has contributed an incorrect amount to the retirement system, the member shall be required to contribute an amount sufficient to correct such error or the board shall pay an amount to the member to correct such error, as the case may be.

This section reflects a recognition by the Legislature that "in a complicated system of this type, errors are bound to occur." *Boston Ret. Bd. v. McCormick*, 345 Mass. 692, 698 n.5 (1963). It enables retirement boards to "correct an honest error by putting members and beneficiaries in the same position they would have been in had the error not been made." *Herrick v. Essex Regional Ret. Bd.*, 465 Mass. 801, 808-09 (2013). Although the statutory text addresses recordkeeping and computational errors, § 20(5)(c)(2) has been construed to encompass legal errors as well. *Id.* at 808-09. (stating that there is no reason corrective action should not be taken under § 20(5)(c)(2))

where “the board’s error was an error of law rather than of recordkeeping or computation” and interpreting § 20(5)(c)(2) as providing a remedy for all errors affecting the amounts a member or beneficiary receives). The scope of § 20(5)(c)(2), so interpreted, includes correction of erroneous enrollment decisions. *St. Pierre v. Worcester Regional Ret. Bd.*, CR-07-886, at *5 (Div. Admin. Law App. June 10, 2010) (holding that board was required to correct error allowing petitioner to become member of retirement system and purchase prior service).

Although the BRB appears to agree that Ms. Sheehan should be granted ten years of creditable service (the amount to which Ms. Sheehan would be entitled under its regulations), it asserts that it is responsible for only the six years accepted by the MTRS because (a) it was the MTRB (and the City of Beverly), and not the BRB, that is to blame for the erroneous enrollment; and (b) the MTRS has only accepted liability for six years. I assume, for the sake of the argument and for purposes of this decision only, that the City of Beverly and the MTRS were responsible for the mistaken enrollment and that the BRB is not responsible for the City of Beverly’s mistake. Nevertheless, the arguments are without merit.

First, § 20(5)(c)(2) reflects the inevitability of errors. Its directive that errors be corrected does not depend on how an error occurred or on which party is at fault.² As former Chief Magistrate Heidlage observed, “[a]s a matter of policy, the legislature has determined that relative fault and equitable considerations are not relevant to the requirement that the system be protected from errors, however they may have arisen.”

² Although the case law sometimes uses phrases like “the board’s error” and “errors made by the board,” *see, e.g., Herrick*, 464 Mass. at 808-09, this phrasing does not appear intended to suggest that the assignment of blame informs the operation of § 20(5)(c)(2).

Donnelly v. Mass. Teachers' Ret. Sys., Docket No. CR-09-176, at *9 (Div. Admin Law App. Sept. 7, 2012).

Indeed, it is not unusual for a retirement board's correction to result in some disadvantage or detriment to a member, even where the error was made by the board. *See, e.g., Parsons v. Beverly Ret. Bd.*, CR-14-826, at *5 (Div. Admin. Law App. May 1, 2015) (holding that notwithstanding the fact that "the Petitioner may have been negatively affected by the Board's mistake," the Board was required to correct it). I cannot see, nor has the BRB explained, why the result should be any different if the affected retirement board is without fault. In fact, § 20(5)(c)(2) is written without regard to fault.

In short, the assignment of blame is irrelevant. *Id.* The BRB cannot avoid its statutory responsibility to correct its records and grant the appropriate amount of creditable service to its member on the grounds that a third party may have been responsible for the original error.

Nor is the BRB's obligation here contingent upon the MTRS accepting liability for the entire ten years of creditable service. *Cf. Tremblay v. Leominster Ret. Bd.*, CR-07-0685, at *6 n.21 (Contrib. Ret. App. Bd. May 19, 2011) (observing that the fact that another system will not accept liability does not affect entitlement to purchase service). Moreover, even if the BRB is correct about the MTRS's obligations – an issue I do not reach here – that is a matter to be resolved through the inter-system liability provisions of G.L. c. 32, § 3(8)(c), which, in the first instance, require a calculation by the Public Employment Retirement Administration Commission ("PERAC"). *Worcester Regional Ret. Bd. v. Contributory Ret. App. Bd.*, 92 Mass. App. Ct. 497, 501 (2017). "That

calculation is performed once the member is ‘retired.’” *Massachusetts Teachers’ Ret. Sys. v. Arlington Ret. Bd.*, CR-23-0621, 2024 WL 4345197, at *2 (Mass. Div. Admin. Law App. Sept. 13, 2024) (citing § 3(8)(c)). And any effort to make that calculation beforehand would perhaps be a “speculative exercise, given that the pertinent member may never retire, may eventually withdraw her accumulated deductions, and/or may serve in additional systems as well.” *Id.*

In sum, the differences in opinion between the BRB and the MTRS regarding the scope of the latter’s liability are not ripe for resolution in this appeal. *Tremblay, supra*, at *6 n.22 (May 19, 2011) (observing that, absent a determination by PERAC as to liability, neither DALA nor the Contributory Retirement Appeal Board (“CRAB”) have the authority to make determinations under § 3(8)(c)); *see also Bliss v. Bristol County Ret. Bd.*, CR-20-138, 2022 WL 9619036, at *3 (Div. Admin. Law App. March 25, 2022) (declining to decide inter-system liability dispute prior to § 3(8)(c) calculation by PERAC) (citations omitted); *Shailor v. Bristol County Ret. Bd.*, CR-20-0343, 2023 WL 2535786, at *7 (Div. Admin. Law App. March 10, 2023) (same) (citations omitted).³

For the foregoing reasons, the BRB’s decision is reversed. The BRB shall grant Ms. Sheehan the full creditable service to which she would have been entitled had she not been mistakenly enrolled in the MTRS.

³ I acknowledge *Corcoran v. Worcester Regional Ret. Bd. & another*, CR-13-243, 2016 WL 11956843 (Contrib. Ret. App. Bd. Dec. 21, 2016), which concerned a dispute over which system was liable for a member’s creditable service. CRAB determined that even though the member had not yet applied to retire for superannuation, the issue was ripe for resolution. That decision, however, was issued before the Appeals Court decided *Worcester Regional Ret. Bd. Contributory Ret. App. Bd.*, 92 Mass. App. Ct. 497 (2017), which found no error in a determination by a DALA magistrate, affirmed by CRAB, that two systems’ respective § 3(8)(c) liabilities were not before her because that determination was to be made by PERAC in the first instance. 92 Mass. App. Ct. at 501.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: March 21, 2025