

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Theresa Skinner,
Petitioner

v.

Docket No. CR-20-0225

Dated: June 9, 2023

Massachusetts Teachers' Retirement System,
Respondent

Appearance for Petitioner:

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Administrative Magistrate:

Timothy M. Pomarole, Esq.
Administrative Magistrate

SUMMARY OF DECISION

In an earlier appeal, the petitioner successfully appealed the denial of her request to purchase prior creditable service. The present appeal concerns which rate of interest applies to that purchase – the buyback interest rate under G.L. c. 32, § 4(1)(p) or the correction of errors interest rate under G.L. c. 32, § 20(5)(c)(2). The Massachusetts Teachers' Retirement System correctly determined that the buyback interest rate applies to the petitioner's purchase of her prior creditable service.

DECISION

In an earlier case, Theresa Skinner successfully appealed the denial of her application to purchase creditable service under G.L. c. 32, § 4(1)(p). In this case, Ms. Skinner appeals the Massachusetts Teachers' Retirement System's ("MTRS") decision that the buyback interest rate

under G.L. c. 32, § 4(1)(p), rather than the correction of errors interest rate under G.L. c. 32, § 20(5)(c)(2), must be applied to her purchase.

The parties have filed cross-motions for summary decision. Ms. Skinner's motion for summary decision appends two documents labeled Attachment A and Attachment B, as well as exhibits numbered 1 through 7. The Board's motion for summary decision appends five exhibits. One of the exhibits, Exhibit 5, is the Petitioner's Amended Pre-Hearing Memorandum in the prior appeal, Skinner v. MTRS, CR-15-593, which itself attaches exhibits numbered 7-19. The attachments to Respondent's Exhibit 5 will be cited by number in the form "Respondent's Exhibit 5()."

Findings of Fact

Based on the documents appended to the parties' submissions, as well as this Division's prior decision in Skinner v. MTRS, CR-15-593, the following facts are not in dispute:

1. Ms. Skinner was employed at the New England Home for Little Wanderers ("the Home") from September 1, 1985 through August 15, 1996. (Petitioner's Statement of Facts, ¶ 2; Respondent's Exhibit 2).
2. In February 2012, Ms. Skinner applied to the MTRS under G.L. c. 32, § 4(1)(p) to purchase her service at the Home for the period from September 1, 1985 to August 15, 1996. (Respondent's Exhibit 1).
3. When the MTRS investigated Ms. Skinner's application, it learned that the Home no longer had Ms. Skinner's personnel files. (Respondent's Exhibit 2).
4. The Home reported to the MTRS that it had a non-contributory defined benefit pension plan covering most employees, which was frozen effective June 30, 1992 and that on July 1, 1994 it had established a 403(b) tax deferred retirement plan with an employer match. (Respondent's Exhibit 3).

5. The MTRS had copies of Ms. Skinner's W-2 Wage and Tax Statements for 1990-1996. (Respondent's Exhibit 4).
6. On October 22, 2015, the MTRS informed Ms. Skinner as follows: "it has been determined that you were entitled to receive a retirement allowance for your service 1/89-6/92 and 9/93-8/96. Thus you are not eligible to buy back these years of service. You have been invoiced for the year of service 9/92-8/93, which you were not entitled to receive a retirement allowance." (Skinner v. MTRS, CR-15-593, at 4 (Feb. 22, 2021)).
7. The MTRS's denial with respect to the period between September 1993 and June 1994 appears to have been issued in error. The Home did not have a retirement benefit plan in effect during that time. (Respondent's Exhibit 3).
8. On October 30, 2015, Ms. Skinner appealed the MTRS's denial of her application to purchase her prior service. (Respondent's Exhibit 5(7)).
9. Prior to the hearing, the MTRS revised its position and permitted Ms. Skinner to purchase the period between September 1993 and June 1994. (Respondent's Exhibit 5).¹
10. Ms. Skinner also revised her position, withdrawing her appeal as to the period between September 1985 through August 1992. (Skinner v. MTRS, CR-15-593, at 3 (Feb. 22, 2021)).
11. As a result of the changes in position by both the MTRS and Ms. Skinner, by the time of the May 9, 2019 hearing, the only time period in controversy was July 1994 through August 1996. (Skinner v. MTRS, CR-15-593, at 6 (Feb. 22, 2021)).

¹ It is not clear from the documents before me in this appeal when this occurred, but I take judicial notice of a letter by the MTRS's general counsel that was filed in CR-15-593 and dated February 1, 2018. That letter states that the MTRS sent Ms. Skinner an "invoice for the 1993-94 school year." Accordingly, I infer that the MTRS had changed its position on or before February 1, 2018.

12. On February 22, 2021, DALA issued a decision finding that Ms. Skinner did not participate in an employer-funded pension plan between July 1994 and August 1996 and held that she was entitled to purchase creditable service for that period of time. (Skinner v. MTRS, CR-15-593 (Feb. 22, 2021)).
13. On February 25, 2021, the MTRS filed a notice of objections to the DALA decision with the Contributory Retirement Administration Board (CRAB). (Petitioner’s Exhibit 1). On May 18, 2021, it withdrew its objections. (Petitioner’s Exhibit 2).
14. On February 23, 2022, the MTRS notified Ms. Skinner that the purchase of her service between July 1994 and August 1996 (costing \$8,663.91) would be subject to a buyback interest rate of 3.5%. (Petitioner’s Exhibits 3 and 4).
15. On March 1, 2022, Ms. Skinner timely filed this appeal of the MTRS’s determination regarding interest. (Petitioner’s Exhibit 5).

Analysis

A. Summary Decision

Summary decision in an administrative proceeding is the functional equivalent of summary judgment in a civil case. Krauss v. Falmouth Ret. Bd., CR-16-288 (DALA May 5, 2018). The moving party may prevail by showing the absence of a genuine issue of material fact or by providing evidence that defeats an element of the opposing party's claim. Kourovacilis v. Gen. Motors Corp., 410 Mass. 706, 715 (1991). If the motion for summary decision is adequately made and supported, a party opposing it must respond with specific facts showing that there is a genuine issue of fact to be resolved. Mass. R. Civ. P. 56(e). A fact is only “material” if it might affect the outcome of the case. Krauss v. Falmouth Ret. Bd., CR-16-288 at 11 (DALA May 5, 2018)

(citations omitted). An issue of material fact is only “genuine” if a factfinder could reasonably resolve the dispute in favor of either party. Id.

B. Buyback Interest Rate v. Correction of Errors Rate

1. Buyback interest rate

The purchase of creditable service based on work at a non-public school is governed by G.L. c. 32, § 4(1)(p), which provides that to purchase a period of prior creditable service, the member must pay 5% of the compensation he or she received during the period of service plus “buyback interest.” Buyback interest, in turn, is defined as one-half the “actuarial assumed interest rate,” which in turn is defined as the “interest that would have been so credited using a rate equal to a system’s actuarial assumed rate of return on investments, as determined from time to time by the [Public Employee Retirement Administration Commission (“PERAC”).]” G.L. c. 32, § 1. The buyback interest rate in this case is 3.5%. (Petitioner’s Exhibits 3 and 4).

The “payment of buyback interest reflects the legislature’s evident intent to have the cost of membership be the same for those who contributed all along and those who bought back time.” McDonough v. Quincy Retirement Board, CR-13-357, 2016 WL 8466253, at 5 (DALA Nov. 9, 2016). After all, an “employee who buys back prior service is paying retirement deductions that would have been taken from her paycheck earlier, had she been eligible at the time. Interest represents the time value of money and puts the person paying late in the same position as the person who all along was having retirement deductions taken from her paycheck.” Id.

2. Correction of errors interest rate

Chapter 32 contains the following provision concerning the correction of errors by retirement boards:

(2) 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.

G.L. c. 32, § 20(5)(c)(2).²

The MTRS has established a correction of errors interest rate that is equal to the CPI-W index, as determined by the Commissioner of Social Security. See 807 CMR 22.02. For the period of 2015 to 2021, the annual interest rates range between 0% and 5%. (Petitioner’s Attachment B).

C. The Interest Rate Applicable to Ms. Skinner’s Purchase

Ms. Skinner contends that because she had been erroneously precluded from purchasing her prior service, under § 20(5)(c)(2) she is entitled to avail herself of the lower interest rate applicable to the correction of errors by retirement boards.

² Notwithstanding the fact that § 20(5)(c)(2) references only errors “in the records” maintained by retirement systems and errors made in “computing a benefit,” the Supreme Judicial Court has concluded that this section applies to errors of law as well. Herrick v. Essex Regional Retirement Board, 465 Mass. 801, 808-09 (2013).

Section 20(5)(c)(2) contains two parts, each of which addresses a different situation, and neither of which are applicable here.

The first sentence of § 20(5)(c)(2) applies to errors made with respect to retirement benefits received by members. If the member receives benefits that are greater than or less than those to which he or she is entitled, “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.” This sentence is inapplicable to this appeal because the purpose of this appeal is not to adjust retirement benefits. An adjustment must be made once Ms. Skinner makes her service purchase, but the adjustment in her future benefit will occur because of this new circumstance, not as a result of an error in calculating her benefit. Of course, the benefits that Petitioner has already received since retirement must be adjusted under the first sentence and that adjustment includes interest calculated with the adjustment of errors rate. But that has no direct relation to the interest that Ms. Skinner owes on her creditable service purchase.

The second sentence pertains to errors made with respect to the amount contributed by a member. If a member has contributed an incorrect amount, “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.” § 20(5)(c)(2). Here, Ms. Skinner is making a purchase, not adjusting contributions. The second sentence is therefore inapplicable. In sum, Ms. Skinner’s purchase does not fall within the scope of § 20(5)(c)(2).

Ms. Skinner argues that her situation is akin to an erroneous exclusion from membership and that the correction of errors interest rate therefore applies. The argument is unavailing. The Contributory Retirement Appeal Board (CRAB) has held that if a member has been erroneously

excluded from membership and must therefore purchase her prior service, the applicable interest rate is the correction of errors rate described in the first sentence of § 20(5)(c)(2). Wright v. State Bd. of Ret., CR-16-68, at 2 (CRAB Oct. 18, 2022). As CRAB observed, “Chapter 32 does not directly address members who were erroneously excluded from membership and sets no particular rate of interest for purchase of creditable service in such circumstances.” Id. at 5. In such circumstances, PERAC had taken the position that “since these members have been excluded by error, it is more logical for the ‘correction of errors’ interest rate to attach to payments of those erroneously excluded.” Id. at 7 n. 15 (citing PERAC Memorandum #14 of 2018 (“Interest Payments in Certain Situations”)). CRAB concluded that given “the silence of G.L. c. 32 on the matter of interest for wrongfully-excluded members and PERAC’s role in filling in statutory gaps, it logically flows that absent any authority to the contrary, PERAC’s guidance is reasonable and due deference.” Id. Accordingly, erroneously excluded members are subject to the correction of errors interest rate when purchasing their service.

CRAB’s adoption of a correction of errors interest rate for erroneously excluded members is premised on a gap in the statute, which PERAC filled. There is no such gap here: the purchase of creditable service based on work at a non-public school is governed, directly and entirely, by the buyback provisions of G.L. c. 32, § 4(1)(p). Grafting the interest rate from § 20(5)(c)(2) onto § 4(1)(p) would not fill a gap in the statutory scheme, it would amend it.

Ms. Skinner also appears to argue, in essence, that because the MTRS erred by denying her application to purchase her prior creditable service in 2015 (resulting in a multi-year, and ultimately successful, appeal process), she should not be penalized for this error by paying the higher buyback interest rate rather than the lower correction of errors interest rate. I disagree.

First, the extent to which the MTRS “made” an error resulting in delay is not entirely clear.

- The MTRS did not appear to err insofar as it denied Ms. Skinner’s application as to the period between September 1985 and August 1982. Ms. Skinner acknowledged prior to the DALA hearing that she was, in fact, entitled to receive a retirement allowance for that time and withdrew her request as to that service. (Skinner v. MTRS, CR-15-593, at 4 (Feb. 22, 2021)).
- As to the period between July 1994 and August 1996, the MTRS suggests that its denial was sound based on the information available to it at the time. This included: (1) documents showing that Ms. Skinner had received a retirement benefit for her service prior to June 1992 (Respondent’s Exhibit 3); (2) documents showing that an employer-funded pension plan was in effect as of July 1, 1994 (Respondent’s Exhibit 3); and (3) Ms. Skinner’s W-2s from 1994 through 1996 (Respondent’s Exhibit 4), on which her employer had marked a box indicating that she had participated in a pension plan. Ms. Skinner’s success on appeal, the MTRS argues, was based on documents obtained later, in connection with her appeal.
- The MTRS *did* evidently err with respect to its denial as to the period between September 1993 and June 1994. Its assertion that Ms. Skinner was entitled to receive a retirement benefit for that time period was inconsistent with the information it had received from the Home. The MTRS changed course by approximately February 1, 2018. The interest associated with the purchase of service between September 1993 and June 1994, however, is *not* at issue in this appeal. (See Petitioner’s Exhibits 5-7 (Ms. Skinner’s appeal letter, the invoice for the purchase of 2.1236 years of prior service, and

correspondence from the Board containing interest calculations for a service purchase of 1994-1996)).

In any case, if Ms. Skinner experienced unfair consequences from the 2015 denial and ensuing administrative process, that would be unfortunate, but this division lacks the equitable powers that would be required to remedy any such unfairness. See Bristol County Ret. Bd. v. CRAB, 65 Mass. App. Ct. 443, 451-52 (2006) (DALA lacks the power to provide equitable remedies).

Accordingly, the decision of the MTRS is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Timothy M. Pomarole

Timothy M. Pomarole
Administrative Magistrate