

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Middlesex, ss.

Thomas F. Swartz,
Petitioner,

Docket Nos. CR-24-0247, CR-25-0338¹

v.

Barnstable County Retirement Board,
Respondent.

Appearances:

For Petitioner: Joseph L. Sulman, Esq.
For Respondent: James H. Quirk, Jr., Esq.

Administrative Magistrate:

Bonney Cashin

Summary of Decision

Following a Civil Service Commission decision on his termination appeal in his favor, the petitioner sought to be reinstated to service as a firefighter. He had retired before the Commission issued its decision. The respondent Board denied his request. The Board's decision is reversed. Under G.L. c. 32, § 105, the petitioner is required to work full time for five years from his reinstatement date to receive increased retirement benefits.

DECISION

Introduction

On May 15, 2025, petitioner Thomas F. Swartz appealed under G.L. c. 32, § 16(4), a decision of the Barnstable County Retirement Association (Board) issued on April 30, 2025 that denied his application for reinstatement to public service. Without objection,

¹ These matters are consolidated for administrative convenience.

the parties agreed to have the case determined on their written submissions under 801 CMR 1.01 (10)(b).

The Board offered seven documents as evidence, which are described in its prehearing memorandum dated July 8, 2024. Mr. Swartz filed ten attachments with his appeal, some of which are duplicates of the Board's filing. The Board's exhibits are admitted and marked 1-7. Mr. Swartz's additional exhibits are admitted and marked 8A-K. On my own accord, I admitted Board counsel's letter dated April 28, 2025, as Exhibit 9.

FINDINGS OF FACT

Based upon the evidence in the record and the reasonable inferences from it, I make the following findings of fact:

1. Thomas F. Swartz is a firefighter and paramedic with the Bourne Fire Department. (Exhibit 1.)
2. Mr. Swartz was terminated from his position on August 22, 2018. (Exhibit 2.)
3. Mr. Swartz applied for superannuation retirement on August 24, 2018. His application was granted. (Exhibit 2, 8D.)²
4. Mr. Swartz appealed his termination to the Civil Service Commission, which ruled in his favor on July 21, 2021. In its conclusion, the Commission stated that Mr. Swartz's "termination is vacated and...he shall be reinstated to his position without

² Mr. Swartz also filed an application for accidental disability retirement that is not part of this appeal.

loss of compensation or other benefits, subject to compliance with such other requirements of law governing his reinstatement as are consistent with this decision.”

(Exhibit 1.) The Commission’s decision is final.

5. On page 2 of its decision, the Commission noted that “[n]othing in this decision addresses the merits of [Mr. Swartz’s] retirement applications or the statutory requirements that govern a return to duty by a retired civil service employee.” (Exhibit 1.)

6. Mr. Swartz filed an application for Reinstatement to Service with the Board on December 20, 2023. (Exhibit 2.)

7. Also on December 20, 2023, Mr. Swartz repaid the gross amount of superannuation retirement allowance he had received to date, including buyback interest. (Exhibit 8F.)

8. The Board denied Mr. Swartz’s application. Its decision was not based on the substantive merits of the application, but instead because Mr. Swartz crossed out portions of the form’s handwritten information about his reinstatement date and the statement informing him that he would need to work for five years to have his post-reinstatement service to count as creditable service. (Exhibit 2.) Mr. Swartz filed an appeal on April 8, 2024, apparently in response to a letter from Board counsel dated March 25, 2024, that referred to the cross-outs. The Board did not issue its decision until June 12, 2024. Mr. Swartz’s appeal, thus, was premature. (Exhibits 4, 5, 8B.)

9. In response to these various procedural irregularities, the Division of Administrative Law Appeals (DALA) communicated with the parties. Noting that the

various filings showed that the parties wanted the applicability of the reinstatement provision in G.L. c. 32, § 105, addressed, DALA suggested that the Board issue another decision that would allow that to happen. (Exhibit 8B.)

10. The Board issued another decision regarding Mr. Swartz's application on April 30, 2025. Again, it denied the application because Mr. Swartz had crossed out portions of the form and some handwritten information. (Exhibits 8C, 9.)

11. Mr. Swartz filed a timely appeal of the Board's second decision on May 15, 2025. (Exhibit 8A.)

DISCUSSION

DALA has jurisdiction to hear Mr. Swartz's appeal. The basis for the Board's second decision was no different from its first decision. Yet the further communications between counsel plainly show that the crux of the matter concerns different interpretations of G.L. c. 32, § 105. The Board cannot ignore a member's substantive disagreement with it by relying on a non-substantive reason for denying an application. None of Mr. Swartz's marks render the text on the form illegible. I view them as a layperson's attempts to show where he disagrees with the Board's view on reinstatement requirements for him. The Board could have accepted the application as submitted and simply noted that it was ignoring the marks Mr. Swartz made as having no effect on the form's text. *Cf. Sirois v. Methuen Ret. Bd.*, CR-24-0641 (Div. Admin. Law App. Apr. 25, 2025), *citing Schulte v. Director of Div. of Emp. Sec.*, 369 Mass. 74, 80 (1975) ("Substantively meritorious claims generally should not be defeated by harmless procedural missteps.").

On July 1, 2004, G. L. c. 32, § 105 came into effect. It provides:

- (a) Any member retired under section 5 or section 10 shall be eligible to be reinstated in a retirement system established under this chapter, if the retired member repays to the system from which he retired an amount equal to the total amount of any retirement allowance received by the retired member, together with buy back interest. Such payment shall be made in one lump sum or in installments as the board shall proscribe. Upon such reinstatement regular deductions shall be made from regular compensation pursuant to paragraphs (b) and (b 1/2) of subdivision (1) of section 22, and for such purpose, the member's date of entry into service shall be the date such member waived his retirement allowance or the date of reinstatement, whichever occurs earlier. Upon completion of such payment, the member shall be entitled to all creditable service for all such periods of service for which deductions were made from the member's regular compensation. For purposes of this section, the term 'reinstatement service' shall mean a member's period of full-time employment after reinstatement in a retirement system under this section.

Section 105(b) provides:

If the member shall have less than 5 years reinstatement service, upon retirement, that member shall receive a refund of the payments actually made to the system under this section. The member shall not be entitled to any creditable service for the reinstatement service, nor shall the member be eligible to establish any additional creditable service under any provision for makeup payments or other payments.

Chapter 32, § 105, is clear regarding the requirement that a retiree who is reinstated must be employed for five (5) years of reinstatement service for that service to count as creditable service. Reinstatement service is defined in Section 105(a) as the member's period of full-time employment after reinstatement.

Chapter 32, § 105, offers no exceptions to the five-year requirement. An exception is precisely what Mr. Swartz seeks, arguing that the language used by the Civil Service Commission in its decision provides the exception. His argument is without

merit. First, the Commission simply lacks authority to contravene the requirements of Chapter 32. *Cf. Morais v. New Bedford Ret. Bd.*, CR-24-0109 (Div. Admin. Law App. Jan. 24, 2025). It recognized the limits of its authority when it stated that Mr. Swartz’s reinstatement was “subject to compliance with such other requirements of law governing his reinstatement as are consistent with this decision.” (Finding 4.) The Commission also noted that “[n]othing in this decision addresses the merits of [Mr. Swartz’s] retirement applications or the statutory requirements that govern a return to duty by a retired civil service employee.” (Finding 5.) Second, retirement boards and DALA are without authority to waive the five-year statutory requirement. *Banks v. State Bd. of Ret.*, CR-24-0068, 2024 WL 3770229 at *2 (Contributory Ret. App. Bd. July 3, 2024.) *See Bristol County Ret. Bd. v. Contributory Ret. App. Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006). The Board correctly informed Mr. Swartz that he was required to work for at least five years following reinstatement for that service to count towards retirement.

Mr. Swartz has complied with the requirements of c. 32, § 105, to be reinstated. He has repaid to the system from which he retired an amount equal to the total amount of any retirement allowance received by the retired member, together with buy back interest. There is no evidence the Board did not accept the check. I do not read § 105 as providing that a Board must decline reinstatement to a member who challenges the 5-year requirement. Section 105(b) *supra* provides a remedy if a member is reinstated and then retires with less than five years of reinstatement service. The loss of creditable

service for the reinstatement period should give one pause when considering working for less than five years.

I consider Mr. Swartz to be reinstated in accordance with c. 32, § 105. This means that his reinstatement date is December 20, 2023, which is the date he signed the application and his retirement repayment check. *Walsh v. Reading Ret. Bd.*, CR-17-0665 (Div. Admin. Law App. May 20, 2025.)

CONCLUSION

The Board's denial of Mr. Swartz's reinstatement application is reversed. Mr. Swartz is to be reinstated with an effective date of December 20, 2023. The Board shall take any necessary further action in accordance with this decision.
SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin

Bonney Cashin
Administrative Magistrate

DATED: September 19, 2025