

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Sheryl Times,
Petitioner,

No. CR-21-0290

Dated: February 16, 2024

v.

State Board of Retirement,
Respondent.

Appearance for Petitioner:
Sheryl Times (pro se)

Appearance for Respondent:
Brendan E. McGough, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner crossed back and forth into and out of state service several times. Her most recent stretch of membership began after the respondent board had promulgated a regulation prorating the credit available to its members for part-time service. That regulation therefore controls the amount of credit to which the petitioner is entitled.

DECISION

Petitioner Sheryl Times appeals from a decision of the State Board of Retirement declining to grant her full-time retirement credit for periods of part-time work. The appeal was submitted on the papers. 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked 1-11.

Findings of Fact

The following facts are not in dispute.

1. Ms. Times began working for the Wrentham State School in 1981. She worked part-time in 1981-1985, full-time in 1985-1988, and part-time again in 1988-1989. Ms. Times then left state service and withdrew her accumulated retirement deductions. (Exhibits 7, 8, 11.)

2. Ms. Times performed a second stint of work at the Wrentham facility in 1993-1995. Then she again left state service and again withdrew her accumulated deductions. (Exhibits 7, 11.)

3. Ms. Times returned to the Wrentham facility for the last time in 2009. During the next few years, Ms. Times successfully repurchased credit for her two previously refunded periods of service, i.e., 1981-1989 and 1993-1995.¹ (Exhibits 2-5.)

4. In 2021, the board provided Ms. Times with an itemized computation of her accumulated service time. The computation indicated that Ms. Times would receive only part-time credit for her part-time work in 1981-1985 and 1988-1989. Ms. Times asked the board to grant her full-time credit for those periods. The board declined, and Ms. Times timely appealed. (Exhibits 7-10.)

Analysis

The retirement benefits of a Massachusetts public employee depend in part on the amount of the employee's creditable service. The general rule is that an employee must be "credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto." G.L. c. 32, § 4(1)(a).

With respect to part-time work, the retirement boards are empowered to "fix and determine" the credit amounts available to members "under appropriate rules and regulations." § 4(2)(b). *See Gomes v. Plymouth Ret. Syst.*, No. CR-14-127, at *6 (CRAB Nov. 18, 2016). A tacit implication of this provision is that an employee is entitled to *full-time* credit for part-time

¹ The cost of such a repurchase is "an amount equal to the accumulated regular deductions withdrawn by [the member] from the system from which [he or she] last became separated," plus interest. G.L. c. 32, § 3(8)(b).

work unless the pertinent board's rules and regulations establish some other formula. *Madden v. Contributory Ret. Appeal Bd.*, 431 Mass. 697, 699-700 (2000); *Murphy v. Falmouth Ret. Bd.*, No. CR-20-0453, 2023 WL 5528749, at *6-7 (DALA Aug. 18, 2023).

Until 1993, no rule or regulation of the board authorized it to grant less-than-full-time credit for part-time service. That year, the board promulgated a regulation stating that part-time employees "shall receive credit . . . based on the number of hours worked in proportion to the regular hours of work of full-time employees." 941 C.M.R. § 2.03(2).

Ms. Times's essential argument is that she should not be bound by the 1993 regulation because the board gave her no notice about its enactment. The case law does not support this argument. Even erroneous advice from a retirement board does not change a member's statutorily prescribed entitlements. *Clothier v. Teachers' Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010). It follows that a member's entitlements cannot be affected by a board's failure to notify her about her rights. *Awad v. Hampshire Cty. Ret. Bd.*, No. CR-08-621, at *7 (CRAB Dec. 19, 2014); *Patton v. Essex Reg'l Ret. Syst.*, No. CR-13-511, at *6 (DALA Jan. 16, 2015, *aff'd*, CRAB Sept. 30, 2016). Statutes and regulations relating to retirement benefits generally take effect upon being duly enacted, irrespective of any efforts by the boards or the Legislature to update the potentially affected individuals. The same is true of statutes and regulations in other areas of the law.

Nevertheless, the 1993 regulation's application to Ms. Times warrants additional discussion. The retirement law provides that "no amendments . . . shall be made that will deprive any . . . member or any group . . . of their pension rights or benefits." G.L. c. 32, § 25(5). This provision "protects the member of a retirement plan in the core of his reasonable

expectations.” *Opinion of the Justices*, 364 Mass. 847, 862 (1973). “Reasonable modifications” to the retirement scheme are permissible, however. *Id.* at 862-64.

In *Madden*, the Supreme Judicial Court addressed § 25(5)’s implications for a credit-proration regulation of a different retirement board (MTRS). The Court decided with little debate that the regulation was a “reasonable modification” to the retirement scheme. 431 Mass. at 703-04. Even so, the Court concluded that the service performed by the member *before* the regulation’s enactment could not be prorated. The Court explained that the member was entitled to expect “that all retirement regulations in effect when she entered the system would be applied to her in accord with the law.” *Id.* at 701. And until the board promulgated its credit-proration regulation, no law or regulation made the member’s credit proratable. *Id.*

At first glance, *Madden*’s analysis might appear to be transposable to Ms. Times, whose service in 1981-1985 and 1988-1989 predated the enactment of the board’s 1993 regulation. A closer look dispels this impression. The expectations that § 25(5) protects are those that members had reason to possess approximately when they “entered the system.” *Madden*, 431 Mass. at 701. *See Dullea v. Massachusetts Bay Transp. Auth.*, 12 Mass. App. Ct. 82, 94 (1981); *McCarthy v. Sheriff of Suffolk Cty.*, 366 Mass. 779, 784 (1975). Over the course of her career, Ms. Times repeatedly crossed back and forth into and out of the state retirement system. But after each of her first two stints, Ms. Times withdrew her funds and relinquished her system-related rights. The law now views her as having established membership in 2009, when she was hired most recently. *See Manning v. Contributory Ret. Appeal Bd.*, 29 Mass. App. Ct. 253, 255 (1990); *Lospennato v. State Bd. of Ret.*, No. CR-08-614, at *12 (DALA June 15, 2012). It was at that juncture that Ms. Times made her currently effective commitment to public service in exchange for a legally protectable package of retirement benefits and obligations. The package

that she opted into then included the regulation that prorates the credit available to members for part-time service. “Her purchase of . . . prior service did not restore the contractual expectation of her [original] membership rights and benefits” *Eldridge v. State Bd. of Ret.*, No. CR-09-514, at *8 (DALA Mar. 28, 2014).

Conclusion and Order

In view of the foregoing, the board’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate