

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

THOMAS WELSH,

Petitioner-Appellant

v.

WORCESTER REGIONAL RETIREMENT SYSTEM

Respondent-Appellee.

CR-20-396

DECISION

Respondent Worcester Regional Retirement System (“WRRS”) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (“DALA”), reversing WRRS’ decision that reduced its calculation of creditable service to Petitioner Thomas Welsh from seven years and one month of service to five years of service. The DALA magistrate issued a decision on April 7, 2023.¹ Though Respondent issued a timely notice of appeal to the Contributory Retirement Appeal Board (“CRAB”) on April 18, 2023, it did not submit the copies of exhibits required by Standing Order 2008-1. On May 31, 2023, CRAB issued an Order of Conditional Dismissal, the deadline for which expired on June 13, 2023. On June 15, 2023, WRRS requested additional time to respond to the Order pursuant to Standing Order 2008-1(d)(2) and CRAB granted WRRS’ request.

Summary

We adopt the magistrate’s Findings of Fact 1-4 as our own. Based on our decision in *Briggs v. Worcester Regional Retirement System and Public Employee Retirement Administration Commission*, CR-20-384 (Nov. 29, 2023), we affirm. In *Briggs*, we held that

¹ The magistrate noted that this case presented the same issue as in *Briggs v. Worcester Reg. Ret. Sys.*, CR-20-384 (DALA March 11, 2022), and although *Briggs* was at the time on appeal to CRAB, the DALA decision in *Briggs* was “consistent precedent [he was] bound to follow”. *Welsh v. Worcester Reg. Ret. Sys.*, CR-20-0396 (DALA April 7, 2023).

pursuant to *MacAloney v. Worcester Regional Retirement Syst. and PERAC*, CR-11-19 (CRAB June 12, 2013), G.L. c. 32 §4(2)(b) does not preempt retirement boards from applying their own rules to allow additional credit for a member's prior service as a call firefighter beyond the five years provided in §4(2)(b).² Welsh's situation as a now permanent firefighter with prior call firefighter service is similar to that of Mr. Briggs, and so *MacAloney* again authorizes WRRS' regional regulation regarding call firefighter service to apply to Mr. Welsh.

Background

Mr. Welsh worked as a call firefighter in the Town of West Boylston.³ He was later appointed as a permanent firefighter in West Boylston.⁴ As a member of the WRRS, he was allowed to purchase his prior service as a call firefighter and was originally credited with seven years and one month of service. Then, on September 17, 2020, the Board reversed its decision and notified Mr. Welsh that he was only entitled to purchase five years of prior service.⁵ Mr. Welsh timely appealed.⁶ WRRS contends that the Supreme Judicial Court ("SJC") decision in *Plymouth Retirement Board v. Contributory Retirement Appeal Board*, 483 Mass. 600 (2019) implicitly invalidates *MacAloney* and thus invalidates any retirement board's regional regulations granting additional creditable service to former call firefighters.⁷ WRRS interprets *Plymouth*'s holding narrowly to allow purchase of creditable service of call firefighter service only through §4(2)(b)'s five year scheme, or additional time beyond the five years only if local municipalities affirmatively adopt the local option language provided for in §4(2)(b).⁸

² In *Briggs*, we reaffirmed the scheme for providing prior call firefighter creditable service under *MacAloney* and found the holdings in *MacAloney* and *Plymouth* to be consistent with each other, contrary to WRRS' position that *Plymouth* rendered *MacAloney* invalid.

³ Finding 1; Board denial letter.

⁴ Finding 2; Board's Memorandum.

⁵ Finding 3; Board denial letter.

⁶ Finding 4.

⁷ In *Plymouth*, the SJC discussed §4(2)(b)'s narrow operation "only as a measurement scheme." 483 Mass. at 605. See Worcester Regional Retirement System's Memorandum of Law in Support of its Objection at 2.

⁸ See G.L. c. 32, §4(2)(b); *Briggs v. Worcester Regional Retirement Syst. et al.*, CR-20-484 (CRAB 2023).

Discussion

In *Briggs*, we concluded that where a member seeking credit for prior service as a call firefighter beyond the five years provided for in §4(2)(b), the statute does not preempt retirement boards from applying their own rules to allow the additional credit.⁹ This allowed Mr. Briggs to purchase an additional nine months beyond the five years provided for in §4(2)(b), pursuant to WRRS' original calculation under its 1984 "four-month rule".¹⁰ §4(2)(b) allows for the purchase of up to five years for prior call firefighter service and allows local municipalities to require retirement boards to apply additional time beyond the initial five years pursuant to its local option language. There is no prohibition language in §4(2)(b) against retirement boards adopting local rules providing creditable service in situations other than those addressed by the statute. Furthermore, as we noted in *Briggs*, WRRS' four-month regulation does not frustrate the legislative intent behind §4(2)(b). In amendments to c. 32 and §4, the Legislature has demonstrated intent to provide full time credit for less than full time work due the hazardous nature of the work of certain public safety employees such as reserve police officers and call firefighters, and for the time they may be available to work but not actually called out.

Here, Mr. Welsh's situation mirrors that of Mr. Briggs. Mr. Welsh served as a call firefighter in West Boylston and was later appointed as a permanent firefighter in the same town. Upon reaching eligibility, he applied to purchase creditable service for the prior call firefighter service within the WRRS and was credited with seven years and one month service as calculated under WRRS' 1984 four-month regulation.

Thus, for the reasons stated in our decision in *Briggs*, we conclude that Mr. Welsh is entitled to purchase the original calculation of his creditable service of seven years and one

⁹ *Briggs v. Worcester Regional Retirement Syst. et al.*, CR-20-484 (CRAB 2023).

¹⁰ WRRS established the "four-month rule" in 1984 which allowed call firefighters to receive credit for service beyond the required five years under §4(2)(b). The four-month rule applied to the facts and our determinations in both *Briggs* and *Welsh*. It states:

"*Call Firemen*. If earnings are \$225.00 per year or more, 4 months of creditable service is allowed for each calendar year of service."

month for prior service as a call firefighter, pursuant to WRRS' duly enacted "four-month" rule.

Conclusion

The DALA decision is affirmed. Mr. Welsh is entitled to the seven years and one month of creditable service pursuant to WRRS' original calculation. Mr. Welsh is entitled to this calculation under both the rule stated in §4(2)(b) and under the WRRS' applicable regulation.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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Date: November 29, 2023