

## CASES OF INTEREST



# RECENT CASES OF INTEREST

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# Recent Cases of Interest

## RECENT CASES OF NOTE

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|------------------------------|------------------|------------|
| ○ Winthrop Retirement Board  | ○ Stokes-DeSalvo | ○ Maraggio |
| ○ Rodrigues                  | ○ DeCesaro       | ○ Murphy   |
| ○ Watertown Retirement Board | ○ Thompson       | ○ Cabral   |
| ○ Back                       | ○ Hardoon        | ○ Mitchell |
| ○ Young                      | ○ Pacheco        | ○ King     |
| ○ McDermott                  | ○ Bell           | ○ Gaddy    |
| ○ Flaherty                   | ○ Caissie        |            |

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## *Winthrop Retirement Board v. LaMonica*

- **Case No.:** 98 Mass. App. Ct. 360 (Appeals Court)
- **Decision Date:** Sept. 9, 2020
- **In a nutshell:** Former Police Chief's pension could be forfeited under § 15(4), even though he was only convicted of the crime of tax evasion, because there was a direct link between his position as Chief and the payments he received as Chief to "look the other way" that underlay the crime for which he was convicted.
- Remanded for consideration of his 8th Amendment claim that forfeiture of his pension is an excessive fine.
- Mr. LaMonica is seeking further appellate review.

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### NOTES:

## ***Rodrigues v. PERAC***

- **Case No.:** 98 Mass. App. Ct. 514 (Appeals Court)
- **Decision Date:** Sept. 29, 2020
- **In a nutshell:** Former Firefighter who was involuntarily retired for ordinary disability for a heart issue, and then subsequently denied re-entry to service for failing to meet the Commonwealth's initial hire medical standards, should have his case remanded to the Superior Court to determine whether PERAC should direct the doctors it retains to perform return to service examinations to utilize age-adjusted and in-service medical standards.
- Mr. Rodrigues is seeking further appellate review.

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## ***Watertown Retirement Board v. PERAC***

- **Case No.:** CR-19-0013 (DALA)
- **Decision Date:** Aug. 28, 2020
- **In a nutshell:** DALA determined that it was reasonable for PERAC to require retirement boards to interview candidates for the fifth member position, as it furthered the board members' fiduciary duty to select the best candidate. DALA noted that it interpreted PERAC's interview requirement to pertain to all *qualified* candidates.
- Final decision of CRAB.

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### **NOTES:**

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## ***Back v. Barnstable County Retirement Board***

- **Case No.:** CR-18-0361 (DALA)
- **Decision Date:** Nov. 13, 2020
- **In a nutshell:** Member seeking accidental disability was asymptomatic at the time of her medical exam. Majority medical panel neither committed an error of law nor lacked pertinent facts in determining that she was not disabled.
- Final decision of CRAB.

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## ***Young v. CRAB***

- **Case No.:** 486 Mass. 1 (Supreme Judicial Court)
- **Decision Date:** Oct. 9, 2020
- **In a nutshell:** The Board properly denied the petitioner's request to calculate her retirement benefit based upon the years she worked as a contract employee, because she was not an "employee" at that time and, therefore, did not receive regular compensation, regardless of the fact that she paid for and received creditable service for those years pursuant to § 4(1)(s).
- Final decision of SJC.

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### **NOTES:**

## ***McDermott v. State Board of Retirement and PERAC***

- **Case No.:** CR-19-0071 (CRAB)
- **Decision Date:** Aug. 21, 2020
- **In a nutshell:** Member whose employment was discontinued and thereafter agreed to 16 months of paid administrative leave was entitled to creditable service for that period of time because he was paid his full benefits and he occasionally responded to colleagues' inquiries.
- PERAC has appealed to CRAB, as it believes those payments were severance payments, which are specifically excluded from the definition of "regular compensation." Also, question as to whether there was collusion because the 16 months of paid leave would give him just enough creditable service to be eligible for a termination allowance.

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## ***Flaherty v. State Board of Retirement***

- **Case No.:** CR-13-596 (DALA)
- **Decision Date:** Nov. 22, 2019
- **In a nutshell:** Spouse was not eligible for Option C retirement benefit. Member falsely claimed that he was unmarried and chose Option A. Due to falsehood, his selection was invalidated, and defaulted to an Option B. There was no valid beneficiary designation, however, so any remaining benefit must be paid to member's estate pursuant to § 11.
- Final decision of CRAB.

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## ***Stokes-DeSalvo v. State Board of Retirement***

- **Case No.:** CR-12-401 (CRAB)
- **Decision Date:** Jan. 8, 2020
- **In a nutshell:** Medical panel's recommended surgical correction for a left wrist injury was reasonable and appropriate and highly likely to succeed, with a low risk of complications. Applicant's failure to undergo such surgery precluded panel from certifying that the injury was permanent. In the alternative, and despite the panel's determination, applicant failed to prove he could not perform his duties, based in large part on properly obtained and reviewed surveillance footage.
- Final decision of CRAB.

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## ***DeCesaro v. Middlesex County Retirement Board***

- **Case No.:** CR-12-380 (CRAB)
- **Decision Date:** Jan. 8, 2020
- **In a nutshell:** Medical panel certificates and narratives that were based on inaccurate information from the applicant who lacked credibility should not be relied upon in determining whether the applicant was disabled. The objective evidence was insufficient to prove incapacity or, in the alternative, permanency.
- Final decision of CRAB.

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### **NOTES:**

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## ***Thompson v. State Board of Retirement***

- **Case No.:** CR-15-85 (DALA)
- **Decision Date:** July 31, 2020
- **In a nutshell:** Pursuant to § 16(4), an appeal to CRAB must be filed within 15 days of notification of the decision. “Notification” occurs when the decision is mailed to petitioner’s home or is *available* to the petitioner. Here, the decision was available to petitioner, because it was in his brother’s possession and he was in communication with his brother and had access to the decision. Dismissed for untimeliness.
- Final decision of CRAB.

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## ***Hardoon v. State Board of Retirement***

- **Case No.:** CR-13-71 (DALA)
- **Decision Date:** Nov. 8, 2019
- **In a nutshell:** The Board properly denied member’s request for a retroactive retirement date even though the member had relied upon inaccurate information that a Board staff member had provided him with.
- Appealed to CRAB.

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## ***Pacheco v. New Bedford Retirement Board***

- **Case No.:** CR-16-464 (DALA)
- **Decision Date:** Dec. 6, 2019
- **In a nutshell:** Member was entitled to a medical panel for ADR, where her injury was not the result of her serious and willful misconduct because there was no evidence that she violated any weight restriction that applied to her when she was injured.
- Final decision of CRAB.

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## ***Bell v. Franklin Regional Retirement Board***

- **Case No.:** CR-15-600 (DALA)
- **Decision Date:** Aug. 14, 2020
- **In a nutshell:** Beneficiary was not entitled to Section 9 benefits as her late husband, who retired under the Heart Law presumption due to coronary artery disease, died as a result of hypoxic respiratory failure and not heart disease.
- Appealed to CRAB.

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### **NOTES:**

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## ***Caissie and Newton Retirement Board v. PERAC***

- Case No.: CR-16-579 (DALA)
- Decision Date: Feb. 7, 2020
- In a nutshell: For the purposes of calculating excess earnings pursuant to G.L. c. 32, § 91A, no portion of business profits can be attributed to a disability retiree as earnings from earned income where the evidence shows that the retiree was just an employee of his wife's business and it was his wife who was responsible for generating the business profits.
- Appealed to CRAB.

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## ***Maraggio v. Norfolk County Retirement Board and PERAC***

- Case No.: CR-18-0329 (DALA)
- Decision Date: June 5, 2020
- In a nutshell: Police Officer was not entitled to ADR where his injuries were sustained after he slipped on ice and fell in the police station parking lot before he reported to his shift and did not occur as a result of and while in the performance of his duties.
- Final decision of CRAB.

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### **NOTES:**

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## ***Murphy v. State Board of Retirement***

- **Case No.:** CR-17-1021 (DALA)
- **Decision Date:** June 19, 2020
- **In a nutshell:** Member was injured while in the performance of her duties because she was injured while traveling, which was a job duty. Alternatively, she was injured while traveling from one work obligation (preparing for an inspection) to another work obligation (performing the inspection) and is entitled to ADR.
- Appealed to CRAB.

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## ***Cabral v. Fall River Retirement Board v. PERAC***

- **Case No.:** CR-15-673 and CR-17-211 (DALA)
- **Decision Date:** June 5, 2020
- **In a nutshell:** Member is entitled to prevail in his claim for ADR based on the Heart Law presumption despite indications of hypertension on his pre-employment physical.
- Appealed to CRAB.

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## ***Mitchell v. Worcester Retirement Board and PERAC***

- **Case No.:** CR-17-084 (DALA)
- **Decision Date:** Sept. 18, 2020
- **In a nutshell:** Beneficiary's Section 9 benefits were not required to be offset pursuant to G.L. c. 32, § 14A, as she did not receive any of the lost wages recovered in several third-party settlements. Additionally, the offset of her benefits due to her receipt of a lump-sum worker's compensation settlement must be calculated from the date she last received weekly workers' compensation benefits and not the date the settlement was reached pursuant to G.L. c. 32, §§ 14(2)(a) and 14(1)(c).
- Final decision of CRAB.

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## ***King v. Woburn Retirement Board***

- **Case No.:** CR-17-1040 (DALA)
- **Decision Date:** June 5, 2020
- **In a nutshell:** Member is not entitled to ADR where his PTSD was caused by his long history of conflict within his own police department and the public criticism he received after he was assaulted by a citizen.
- Appealed to CRAB.

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### **NOTES:**

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## ***Gaddy v. Boston Retirement Board***

- **Case No.:** CR-18-0266 (DALA)
- **Decision Date:** July 31, 2020
- **In a nutshell:** Board has discretion to deny the waiver of repayment of monies owed by a member due to a pension under-contribution rate charged to her for a number of years, even where the Board previously granted waivers in similar circumstances.
- **Appealed to CRAB.**

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### **NOTES:**

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#### **COMMONWEALTH OF MASSACHUSETTS**

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