

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Karen Ballinger,
Petitioner,

No. CR-23-0551

Dated: June 28, 2024

v.

Plymouth County Retirement Board,
Respondent.

ORDER GRANTING SUMMARY DECISION

Petitioner Karen Ballinger is a retired member of the respondent board. She appeals from a board decision declining to modify her retirement “option” under G.L. c. 32, § 12(2). The board has filed a motion for summary decision, which Ms. Ballinger has not opposed.

Summary decision is warranted where “there is no genuine issue of fact . . . and [the moving party] is entitled to prevail as a matter of law.” Standard rule 7(h).¹ The following facts are undisputed here. Ms. Ballinger served as a police officer until 2017, when she retired for accidental disability. At that time, she was married. As part of her retirement paperwork, Ms. Ballinger selected option (c) under G.L. c. 32, § 12(2), naming her husband as her beneficiary. The pertinent form stated: “You may not change your option selection once your retirement becomes effective.”

In 2021, Ms. Ballinger and her husband divorced. Their separation agreement was incorporated² into the Probate and Family Court’s judgment of divorce. The agreement stated in part: “The [ex-husband] waives all right, title and interest in [Ms. Ballinger’s] retirement

¹ In accordance with G.L. c. 30A, § 9, the “standard rules” in this context are the provisions of 801 C.M.R. § 1.01.

² With respect to its pertinent provisions, the agreement was not “merged” into the judgment. *See DeCristofaro v. DeCristofaro*, 24 Mass. App. Ct. 231, 235 (1987).

accounts” Thereafter, Ms. Ballinger asked the board to change her retirement option from option (c) to option (a). The board declined, and Ms. Ballinger timely appealed.

The retirement law allows public employees to choose among several blends of retirement benefits. Option (a) provides the “full retirement allowance” to the member herself. G.L. c. 32, § 12(2). Options (b) and (c) reduce the amount of the member’s own allowance; in return, they grant allowances to the member’s beneficiaries upon the member’s death. *Id.*

The governing statute states that “no election of an option shall be valid . . . unless such election is filed with the board on or before the date [the member’s] allowance becomes effective.” G.L. c. 32, § 12(1). This rule has generated distress in the cases of members who designated their spouses as beneficiaries, retired, and then divorced. But the statutory prohibition on post-retirement option modifications applies even in these circumstances. *See Barker v. State Bd. of Ret.*, No. CR-15-72 (DALA June 26, 2015, *aff’d*, CRAB Dec. 21, 2016); *Jump v. State Bd. of Ret.*, No. CR-17-1056 (DALA June 14, 2019); *Bergstrom v. State Bd. of Ret.*, No. CR-00-95 (DALA Feb. 16, 2001). It is more generally true that administrative agencies are not authorized to depart from clear statutory rules on the basis of “equitable” considerations. *See Bristol County Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006).

Ms. Ballinger emphasizes that, through the separation agreement and judgment of divorce, her ex-husband waived any interest in her retirement account. But those instruments were effected by the Probate and Family Court in a suit between Ms. Ballinger and her ex-husband. “Any action there may be to enforce the terms of the separation agreement lies between those who are parties to it.” *Jump, supra*, at *14. By way of illustration, the Probate and Family Court could conceivably compel Ms. Ballinger’s ex-husband to assign or relay any

option (c) payments to Ms. Ballinger's estate or successors.³ As for the board itself, it was not a party to the divorce proceedings. The judgment of divorce neither required nor empowered the board to take any action, including the action of modifying Ms. Ballinger's retirement option.

The undisputed facts establish that Ms. Ballinger is no longer entitled to revise her choice of option. It is therefore ORDERED that the motion for summary decision is ALLOWED. Summary decision is hereby entered in the board's favor.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate

³ Ms. Ballinger's ex-husband is not a party to this appeal and would not be bound by this decision under principles of claim and issue preclusion. See *Duross v. Scudder Bay Cap., LLC*, 96 Mass. App. Ct. 833, 836-37 (2020); *Brennan v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 1108, slip op. at n.5 (2005).