

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

**Division of Administrative Law Appeals**

**Ryan Bugler,**  
Petitioner

v.

Docket No. CR-19-0557

Date: December 1, 2023

**Lexington Retirement Board,**  
Respondent

**Appearance for Petitioner:**

*pro se*

**Appearance for Respondent:**

Christopher Collins, Esq.  
Law Offices of Michael Sacco, P.C.  
P.O. Box 479  
Southampton, MA 01073

**Administrative Magistrate:**

James P. Rooney

**Summary of Decision**

Member receiving accidental disability benefits had his pension recalculated because of an error in the initial calculation that included the lump sum payment he received for unused vacation time as regular compensation. The member's appeal denied because there was no error in recalculating his benefit to exclude the lump sum payment for unused vacation time because this payment was not regular compensation.

**DECISION**

Ryan Bugler, a former firefighter for the Town of Lexington who suffered an on-the-job injury and is on accidental disability retirement, appeals from the Lexington Retirement Board's decision to seek repayment from him of a \$19,000.66 overpayment of his retirement benefit. I

held a hearing on April 27, 2023 at the Division of Administrative Law Appeals. I marked Mr. Bugler's prehearing memorandum as Pleading A and the Retirement Board's memorandum as Pleading B. I recorded the hearing digitally and admitted into evidence fourteen exhibits. Mr Bugler was the sole witness. The parties made oral closing statements.

### **Findings of Fact**

Based on the testimony and exhibits presented at the hearing and reasonable inferences from them, I make the following findings of fact:

1. Ryan Bugler was employed by the Town of Lexington as a firefighter, which was his "dream job." His dream ended prematurely on December 14, 2011 for, while on a medical call, he sustained a T6-T12 incomplete spinal cord injury that partially paralyzed him. He has no feeling from the chest down, no use of his right leg, and only intermittent use of his left leg. (Bugler testimony.)
2. Mr. Bugler was retired on accidental disability in March 2014. He understood his retirement date to be March 14, 2014 and thought that the Lexington Fire Department knew this. When he retired, he received a lump sum payment of \$6,849.22 for unused vacation time. His monthly benefit was determined to be \$4,076.05. (Exs 1 and 9; Bugler testimony.)
3. On May 20, 2014, the Town of Lexington wrote Mr. Bugler a letter in which it stated that his actual retirement date was March 4, 2014 and requested that he repay the town \$829.97 that the town had paid him in wages between March 4 and March 14, 2014. Although Mr. Bugler thought the town was mistaken, he ultimately repaid this amount because his union advised him

to do so and because he was not aware of any option to appeal.<sup>1</sup> (Ex. 13; Bugler testimony.)

4. A 2018 PERAC audit determined that Mr. Bugler's retirement benefit, which was based in part on his regular compensation, had been miscalculated because of the erroneous treatment of the lump sum payment he received for unused vacation time as regular compensation. (Ex. 1.)

5. One May 15, 2019, the Lexington Retirement Board sent Mr. Bugler a letter informing him of the miscalculation and the Board's estimate that he had been overpaid by \$26,106.55 and in future his monthly benefit would be reduced to \$3,728.54. A few months later, the Board recalculated the amount owed, this time taking into account cost of living increases in Mr. Bugler's benefit, and determined it was \$19,000.66. This recalculation also affected his monthly benefit, which would now be \$3,856.71. (Exs. 1 and 2.)

6. The Retirement Board took up the overpayment issue at an 8:00 a.m. meeting on August 29, 2019. Mr. Bugler was invited to attend but, given his physical limitations, attending an early morning meeting was not practical for him. The Board decided to recover the overpayment by deducting \$316.67 from Mr. Bugler's monthly pension for the next five years. It informed him of this decision in a September 10, 2019 letter. (Ex. 3.) Mr. Bugler sent a letter to the Board objecting to the recalculation of his pension. (Ex. 11.) The Board reaffirmed its decision at a meeting in October 2019, and sent him a letter so stating, this time listing appeal rights. (Ex. 12.) Mr. Bugler timely appealed, expressing disbelief at another clerical mistake to his disadvantage. (Ex. 14.)

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<sup>1</sup> This matter between Mr. Bugler and the Town of Lexington is not part of this appeal but is the beginning of the frustrating issues Mr. Bugler had associated with his retirement benefit.

### **Discussion**

Retirement boards have the power and the responsibility to correct errors in pension benefits paid to a retired member, whether that correction is to the benefit or the detriment of the member. *See* M.G.L. c 32, § 20(c)(2). A member may appeal such a recalculation of his benefit, and on appeal would have the burden to show that the recalculation is erroneous.

Mr. Bugler did not present evidence to counter the Lexington Retirement Board's recalculation of his pension. Rather, he expressed suspicion of the repeated errors in the calculation of his pension benefit from the dispute about his correct retirement date to the first recalculation of his overpayment, which the Board now concedes was off by more than \$7,000. He also objected to the failure to explain the PERAC audit to him and how it affected his pension. Finally, he objected that the reduction in his benefit plus the deduction of an additional \$316.67 per month has put him in a financially precarious position.

The Division of Administrative Law Appeals does not have equitable power to address all his concerns. It has only the authority to consider whether the pension recalculation was accurate. The public employee pension statute provides that a member may request a waiver of repayment of an excess amount paid to him. M.G.L. c. 32, § 20(5)(c)(3). Mr. Bugler was not aware of this option when the Board was considering what to do about the overpayment. He stated in his prehearing memo that he wished to apply for a waiver. This appeal concerns only the recalculation, not Mr. Bugler's recently expressed interest in a waiver. Although Board counsel was skeptical that the Board would grant a waiver, Mr. Bugler should consider this

option.<sup>2</sup>

The only live issue then is whether PERAC and then the Retirement Board correctly determined that the lump sum payment of \$6,849.22 Mr. Bugler received for unused vacation time was improperly treated as regular compensation. “Regular compensation” for any service after June 30, 2009 is “compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.” M.G.L. c. 32, § 1. Wages in turn are defined as “the base salary or other base compensation of an employee paid to that employee for employment by an employer.” *Id.* Excluded from regular compensation are bonuses, overtime and “1-time lump sum payments in lieu of or for unused vacation or sick leave.” *Id.* Because the payment Mr. Bugler received when he retired was a lump sum payment for the unused

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<sup>2</sup> The waiver provision of the retirement statute provides that:

At the request of a member or beneficiary who has been determined to have been paid amounts in excess of those to which he is entitled or at the request of a member who has been determined to owe funds to the retirement system, the board may waive repayment or recovery of such amounts provided that:

- (i) the error in any benefit payment or amount contributed to the system persisted for a period in excess of one year;
- (ii) the error was not the result of erroneous information provided by the member or beneficiary; and
- (iii) the member or beneficiary did not have knowledge of the error or did not have reason to believe that the benefit amount or contribution rate was in error.

M.G.L. c. 32, § 20(5)(c)(3). The decision of a retirement board to waive repayment is at the discretion of the board. Mr. Bugler’s claim that the reduction in his monthly benefit coupled with the additional deduction of \$316.67 has put him in a financially precarious position is a factor the board may consider when deciding whether to grant him a waiver.

vacation time he had accrued during his career as a firefighter, it was not regular compensation.

The Supreme Judicial Court and the legislature have recently had occasion to consider issues concerning whether payment for unused vacation time can be regular compensation, but in circumstances different from Mr. Bugler's. The case before the SJC involved Joseph O'Leary who, like Mr. Bugler, worked as a Lexington firefighter. The collective bargaining agreement allowed firefighters to elect each year to receive compensation for up to ten days of unused vacation time. Mr. O'Leary took advantage of this provision and for years was paid for ten days of unused vacation time. When the matter came to the SJC, the Court held that annually elected payments for unused vacation time were not regular compensation. *Joseph O'Leary v. Contributory Retirement Appeal Board*, 490 Mass. 480 (August 11, 2022). The legislature modified this holding by statute allowing certain payments in lieu of unused vacation time to count as regular compensation if a collective bargaining agreement in force by May 1, 2018 provided for it, the member had consistently participated in the program, and retirement deductions were taken from this "pay." M.G.L. c. 32, § 106.<sup>3</sup> This statutory amendment does not help Mr. Bugler because he received one lump sum payment on retirement for years of unused vacation time rather than annual routine payments for unused vacation time and, as far as I know, retirement deductions were not taken from this payment.

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<sup>3</sup> There are numerous exceptions within Section 106 that I have not attempted to describe because the section is ultimately irrelevant here.

Accordingly, I must affirm the Lexington Retirement Board's recalculation of Mr. Bugler's retirement benefit.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*James P. Rooney*

James P. Rooney  
Acting Chief Administrative Magistrate

Dated: December 1, 2023