

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Daniel Carr,
Petitioner

v.

Docket No. CR-22-0317
Dated: Oct. 18, 2024

**Hampden County Regional
Retirement Board,**
Respondent

Appearance for Petitioner:

Christopher J. Collins, Esq.
Sacco & Collins, P.C.
P.O. Box 479
Southampton, MA 01073

Appearance for Respondent:

Edward M. Pikula, Esq.
1441 Main Street, Suite 900
Springfield, MA 01103

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

Retirement board may not take lost wages offset under G.L. c. 32, § 14A when the member's employer was fully reimbursed for lost wages from a third-party lawsuit settlement, including by means of a lien under the workers' compensation statute or G.L. c. 32, § 111F.

DECISION

Petitioner Daniel Carr appeals from a decision of the Hampden County Regional Board of Retirement finding that Mr. Carr failed to prosecute fully, or failed to cooperate

with the board in the prosecution of, his third-party claim for lost wages. Consequently, the Board charged him a \$25,000 offset for lost wages under G.L. c. 32, § 14A. On April 11, 2023, DALA ordered the parties to file a joint pre-hearing memorandum and proposed exhibits. On October 27, 2023, the parties submitted their joint pre-hearing memorandum, along with 16 agreed-upon proposed exhibits and one additional exhibit proposed only by the Board. The parties requested that the matter be decided on written submissions under 801 CMR 1.01(10)(c). I allowed the motion and gave the parties until June 28, 2024 to file any additional argument; neither party did. I hereby admit into evidence the 16 agreed-upon exhibits, as marked, and I also admit the Board's additional proposed exhibit as Exhibit 17. (Exs. 1-17.)

FINDINGS OF FACT

I make the following findings of fact:

1. Daniel Carr is a 59-year-old Hampden County Regional Board of Retirement member. (Ex. 3.)
2. Mr. Carr was employed by the Town of Wilbraham Police Department as a Police Officer from June 10, 1989 to June 17, 2019, when he retired for superannuation at the rank of sergeant. (Ex. 3.)
3. On February 6, 2018, Mr. Carr injured his head and shoulder after slipping on ice while attempting to serve a warrant for an involuntary commitment of a resident of Woodcrest Condominium Association (Woodcrest). (Ex. 4.)
4. Mr. Carr received Injury on Duty (IOD) benefits under G.L. c. 41, § 111F from February 6, 2018 through January 28, 2019, when he returned to work on light duty. He continued to work light duty until June 17, 2019, when he first retired for

superannuation. (Stipulation; Ex. 12.)

5. Mr. Carr also applied for and received accidental disability retirement under G.L. c. 32, § 7. The Board approved Carr's accidental disability claim effective June 17, 2019, and on November 30, 2020 his superannuation retirement was converted to an accidental disability retirement. (Ex. 7.)

6. On August 17, 2020, Mr. Carr sued Woodcrest and Crystal Brook Landscape Construction, Inc. ("Crystal Brook") in Hampden Superior Court, claiming that their negligence caused his workplace head and shoulder injuries. (Ex. 5.)

7. The Town paid Mr. Carr a total of \$90,147.14 in IOD benefits related to the February 6, 2018, incident. The Town was reimbursed \$49,728.00 by its insurance carrier, Federal Insurance Company (Federal). Thus, the Town's gross IOD lien was \$40,419.14. (Stipulations.)

8. Federal also paid for Mr. Carr's IOD medical bills totaling \$12,988.54. Since Federal reimbursed the Town \$49,728.00 for IOD wages, Federal's gross right of reimbursement was a total of \$62,716.54. (Ex. 12; Stipulations.)

9. On November 24, 2021, Mr. Carr settled his complaint against Woodcrest and Crystal Brook for \$325,000. That \$325,000 was ultimately divided between Mr. Carr, his Attorney, the Town, and Federal. After Mr. Carr's attorney received \$119,819.37 in legal fees and expense reimbursements, the Town received \$25,582.90 and Federal received \$39,678.87 in satisfaction of their liens. (The Town and Federal payments were approximately their original liens minus expenses and one-third for attorney's fees.) (Exs. 9, 10, 11. 12.)

10. On December 8, 2021, the Town released Mr. Carr from any and all

claims on account of amounts paid by the Town to or on behalf of Mr. Carr in connection with his injuries and the amounts recovered in settlement of his third-party claim. (Ex. 11.)

11. Mr. Carr himself received the remainder of \$139,918.86 to cover remaining medical bills; past, present, and future suffering; loss of his police officer career; and surgical scarring. (Exs. 12, 15.)

12. Mr. Carr did not give notice of his suit or settlement to the Board until after the settlement had occurred. (Stipulation.)

13. The Board was not provided with any opportunity to be heard as to the allocation of the settlement. (Stipulation.)

14. On August 3, 2022, after the Board was notified of the settlement, the Board decided: (1) that Mr. Carr failed to prosecute fully or failed to cooperate with the Board by failing to give proper notice of, or keep the Board informed about, his third-party claim; and (2) to claim lost wages of \$25,000 by taking an offset against his accidental disability retirement allowance under G.L. c. 32, § 14A. The Board decided to reduce Mr. Carr's monthly allowance by \$1,400 per month until the \$25,000 offset was paid off. (Exs. 1, 16, 17.)

15. On August 5, 2022, Mr. Carr timely appealed the Board's decision to DALA. (Ex. 2.)

CONCLUSION AND ORDER

Mr. Carr injured himself in the course of his duties as a police officer. He received IOD benefits under G.L. c. 32, § 111F until he retired for superannuation. His retirement was later converted to accidental disability retirement. Without informing the

Board, Mr. Carr sued a third party to recover for his injuries. The lawsuit was settled, and the proceeds were divided among the Town of Wilbraham and its insurer, both of whom paid his IOD benefits, and Mr. Carr and his attorney; the three recipients paid the same share of the attorney's fees and expenses. The Board has charged Mr. Carr with a \$25,000 setoff for lost wages under G.L. c. 32, § 14A. Mr. Carr appeals the setoff.

G.L. c. 32, § 14A provides, in relevant part:

If a member . . . entitled to a pension under the provisions of section six, *seven* [accidental disability retirement] or nine also has a *right to recover lost wages* from any party other than his employer by reason of the same injury . . . of such member, the amount of any such recovery for lost wages shall be offset against and payable in lieu of any pension payable on his account If any such member or beneficiary neglects or fails to prosecute fully such right, the board shall prosecute such right on the member's behalf. In the event the member or beneficiary fails to cooperate with the board in its prosecution thereof the board may, during the period of such failure, suspend such member's or beneficiary's right to further payment under the provisions of section six, *seven* or nine.

(Emphasis added.) The Board maintains that § 14A clearly means that any recovery attributable to lost wages in the third-party suit must be offset against Mr. Carr's accidental disability benefit. Mr. Carr contends that no offset should be taken because all of the lost wages recovery from the suit was paid to the Town and its insurer, not him.

As DALA explained in *Mitchell v. Worcester Retirement Bd. and PERAC*, CR-17-084, at *10 (DALA Sept. 18, 2020):

The evident purpose of Section 14A is to prevent double recovery by a [member] like [Petitioner]. When Section 14A refers to "the amount of any such recovery" attributable to lost wages in a third party suit, it is hardly likely that it means recovery by anyone; it must mean recovery by the [member]. Just like in the instance of the workers' compensation offset previously discussed, if [Petitioner] had received settlement amounts in a third-party suit that were attributable to lost wages, then Section 14A would require that this recovery by [him] be offset against any accidental [disability retirement] benefits [he] would otherwise be entitled to.

Mr. Carr did not receive any recovery in the third-party suit attributable to lost wages, however. That is because of a provision in the IOD statute that addresses third-party suits. G.L. c. 41, § 111F. It provides that, in instances in which a third party may be liable because of a work injury to an employee paid IOD, the member or his employer can sue the third party to attempt to obtain a recovery. But, whoever brings the suit,

[t]he sum recovered shall be for the benefit of the [employer] paying such compensation, unless the sum is greater than the compensation paid to the person so injured, in which event the excess shall be retained by or paid to the person so injured. For the purposes of this section, “excess” shall mean the amount by which the total sum received in payment for the injury, exclusive of interest and costs, exceeds the amount paid under this section as compensation to the person so injured. . . . The expense of any attorney’s fees shall be divided between the city, town or fire or water district and the person so injured in proportion to the amounts received by them respectively.

G.L. c. 41, § 111F.

Here, because the Town of Wilbraham, Mr. Carr’s employer (and the insurance company that paid part of the IOD benefits and consequently placed a lien on the proceeds from the suit), received the portions of the third-party settlement attributable to lost wages, less a proportional amount of attorney’s fees and costs, there was no double recovery by Mr. Carr and therefore no offset to be applied under § 14A. The remaining settlement proceeds that Mr. Carr received were to cover medical bills; past, present, and future suffering; loss of his police officer career; and surgical scarring.

This outcome is consistent with DALA’s past § 14A cases. *See Mitchell*, supra (no § 14A offset where third-party settlement for lost wages paid directly to employer to satisfy workers’ compensation lien and remainder paid to member’s estate); *Goodman v. Springfield Retirement Sys.*, CR-19-0354 (DALA Sept. 17, 2021) (no § 14A offset where third-party settlement for lost wages was paid directly to employer to satisfy workers’

compensation lien and remainder of settlement went to member and his wife); *Bryant v. Springfield Retirement Bd.*, CR-99-363 (CRAB Sept. 15, 2000) (no §14A offset where \$235,000 of a \$240,000 third-party settlement allotted to member's wife for "loss of consortium, comfort care and society" and remaining \$5,000 paid to member for "pain and suffering and other damages.").

The Board acknowledges that Mr. Carr did not receive any of the lost wages recovery but argues that to fail to offset the lost wages settlement sums against the accidental disability benefits to which Mr. Carr is entitled would render § 14A a nullity because a public employer will always be entitled to a lost wages recovery. Similar to the circumstances in *Mitchell*, there is no evidence in the record as to whether public employers always place an IOD or workers' compensation lien on third party suits, but § 111F itself acknowledges that a lost wages recovery may be greater than the amount an employer is entitled to and thus some portion of such recovery may end up going to the beneficiary. Section 14A would apply in that instance, and thus it is not a nullity. Accordingly, I conclude that there is no basis to offset the Town of Wilbraham's recovery of lost wages as a result of the settlement agreement in Mr. Carr's third-party suit.

The Board's reliance on *Basile v. Springfield Retirement Bd.*, CR-17-109 (DALA May 3, 2019), is misplaced. There, an injured fire fighter retired for accidental disability filed a third-party suit and recovered \$155,000 for himself. The DALA magistrate approved a § 14A offset because Mr. Basile had not notified his retirement board that he had filed suit before he settled his claim, and that retirement board had been able to negotiate lost wages offsets in similar third-party claims filed by fire fighters injured in

the same accident that hurt Mr. Basile. The problem with the *Basile* decision is that § 14A does not require members to notify their retirement boards when they file suit or settle the suit. It merely states that if the member neglects or fails to prosecute fully that right, the board may prosecute that right on the member's behalf. It can hardly be said that Mr. Carr failed to prosecute fully his right to lost wages, as he recovered, and arranged to have paid to his employer and its insurer, the full sum of his lost wages minus the attorney's fees and costs that they must share under § 111F.

For the reasons stated above, I conclude that the Hampden County Regional Retirement Board is not entitled to an offset for lost wages under G.L. c. 32, § 14A. The Board's decision is therefore reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Oct. 18, 2024