

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Richard Covino,
Petitioner,

No. CR-23-0496

Dated: December 20, 2024

v.

Massport Employees' Retirement System,
Respondent.

Appearances:

For Petitioner: James H. Quirk, Jr., Esq.

For Respondent: Richard Heidlage, Esq.

For Boston Retirement System: Michael Sacco, Esq.

For Gloucester Retirement System: Thomas F. Gibson, Esq., Gerald A. McDonough, Esq.

For Public Employee Retirement Administration Commission: Judith A. Corrigan, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

For several years, the petitioner was employed by two governmental units connected to two separate retirement systems. He was a dual member of both systems. But during the last five years of his public service, the petitioner worked only for one governmental unit. He is therefore entitled only to one retirement allowance.

DECISION

Petitioner Richard Covino appeals from the computation of his retirement benefits performed by the Massport Employees' Retirement System (Massport system). The appeal was submitted on the papers without objection. The Boston Retirement System, the Gloucester Retirement System, and the Public Employee Retirement Administration Commission (PERAC) intervened and/or participated. I admit into evidence the petitioner's exhibits marked 1-4.

Findings of Fact

The parties agree on the following facts.

1. From 1984 until 2011, Mr. Covino was employed as an EMT with the city of Boston. Throughout that period, Mr. Covino maintained membership in the Boston Retirement System and made retirement contributions to that system. (Exhibit 4.)

2. Mr. Covino moonlighted in a series of second jobs. From 2000 to 2005, he worked for the town of Cohasset and was a member of the Norfolk County Retirement System. From 2005 to 2006, he worked for the city of Gloucester and was a member of the Gloucester Retirement System. From 2006 to 2011, he worked for Massport and was a member of the Massport system. He made retirement contributions to each of the systems in which he was a member. (Exhibit 4.)

3. In 2011, Mr. Covino left his city of Boston job. From then until 2023, Mr. Covino remained employed only by Massport and made retirement contributions only to the Massport system. (Exhibit 4.)

4. In 2023, Mr. Covino retired for superannuation. In the process of computing Mr. Covino's benefits, the Massport system determined that he was entitled to a single retirement allowance, as in the usual case. Mr. Covino timely appealed, claiming a right to a second allowance, payable in his view by the Boston Retirement System. (Exhibits 1, 2.)

Analysis

A Massachusetts public employee earns the right to a retirement allowance by accumulating "creditable service." *See* G.L. c. 32, § 5(2)(a). Most or all of each employee's creditable service consists of his or her time working for Massachusetts governmental units while maintaining membership in Massachusetts retirement systems. *See* § 4(1)(a).

It is possible, though uncommon, for a person to be employed simultaneously by two governmental units connected to separate retirement systems. Such an employee is permitted to maintain "dual membership" in both systems. *See* § 3(7)(a).

The retirement benefits of a dual member are addressed by two overlapping provisions, G.L. c. 32, §§ 3(7) and 5(2)(e). Interpretive questions not implicated here may arise when the dual member retires simultaneously out of both of the pertinent employment positions. *See Hannon v. Essex Reg'l Ret. Bd.*, No. CR-20-303, 2024 WL 1832332, at *6-7 (Div. Admin. Law App. Apr. 19, 2024).

Mr. Covino's case triggers a different analysis. At the time of his retirement in 2023, he was working only for Massport. The last time he was actively employed by governmental units in two systems was 2011, when he left his Boston job. The general principle applicable to such circumstances is stated in § 3(7)(d):

If any person who is a member of two or more systems terminates his service in one governmental unit other than by retirement but continues in service in one or more other governmental units, his membership in the system pertaining to the former governmental unit shall thereupon be transferred to the system of the governmental unit to which he is devoting the major portion of his employment and the provisions of [§ 3(8)] shall be applicable

Under this provision, once Mr. Covino left his various prior jobs, the Massport system became entitled to his accumulated retirement accounts. The Massport system also became responsible for disbursing Mr. Covino's entire retirement allowance. To alleviate that burden, the Massport system gained the right to collect proportional reimbursement for the allowance from each of Mr. Covino's prior systems. *See* § 3(8)(a), (c); *Haverhill Ret. Sys. v. Contributory Ret. Appeal Bd.*, 82 Mass. App. Ct. 129, 132-33 (2012).

In certain circumstances, an exception to the foregoing arrangement arises under § 5(2)(e). That section is somewhat involved.¹ It starts out by describing the type of individual that it covers in terms that appear to include Mr. Covino, i.e.:

A person who has been a member of 2 or more systems and who . . . has received regular compensation from 2 or more governmental units concurrently for greater than 60 days

When § 5(2)(e) is triggered, the results are that:

notwithstanding [§ 3(8)(c)], each system shall pay the superannuation retirement allowance attributable to membership in that system to the member; and . . . [§ 3(7)(d)] shall not apply

In practical terms, this directive means that a pertinent member will “collect two separate retirement allowances [from two systems].” *Revere Ret. Bd. v. Public Emp. Ret. Admin. Comm’n (Milinazzo)*, No. CR-21-159, 2023 WL 7402529, at *4 (Div. Admin. Law App. Nov. 3, 2023).

Soon before it comes to an end, § 5(2)(e) adds an extra caveat:

This paragraph shall only apply to the 5 years of creditable service immediately preceding a member’s superannuation retirement

¹ The full text of § 5(2)(e) reads as follows: “A person who has been a member of 2 or more systems and who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently for greater than 60 days shall, upon retirement, receive a superannuation retirement allowance to become effective on the date of retirement that is equal to the sum of the benefits calculated pursuant to this section as though the member were retiring solely from each system; provided, however, that notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the superannuation retirement allowance attributable to membership in that system to the member; and provided further, that this section shall not apply to any member who has vested in 2 or more systems as of January 1, 2010 or to any position whose annual regular compensation was less than \$5,000. Paragraph (d) of subdivision (7) of section 3 shall not apply if this paragraph applies. Upon retirement a member shall be considered a dual member if the member satisfies this paragraph. This paragraph shall only apply to the 5 years of creditable service immediately preceding a member’s superannuation retirement under this section. This paragraph shall not apply to section 6.”

This caveat may be awkwardly located or worded. Still, its meaning is reasonably clear: namely, that § 5(2)(e) does not come into play unless the conditions stated at its outset—membership in two systems, plus sixty days of concurrent regular compensation from two governmental units—were all satisfied during the member’s last five years in public service. A published PERAC memorandum reflects this reading, stating:

[U]pon retirement, the system from which the member retires must determine if, during the last 5 years of creditable service, the member has triggered the provisions of § 5(2)(e). If so, the member’s contributions must be returned to the prior system, and the member shall be retired separately from those two systems.

PERAC Memo No. 29 / 2014 (Aug. 13, 2014). *See also Milinazzo*, 2023 WL 7402529, at *4; *Macedo v. New Bedford Ret. Bd.*, No. CR-17-570, at *5 (Div. Admin. Law App. July 31, 2020). Mr. Covino does not articulate an alternative construction of the statute.

The result of the foregoing analysis is that § 5(2)(e) does not apply to Mr. Covino, whose concurrent employment with governmental units in separate systems ended twelve years before his retirement from public service. There was therefore no error in the Massport system’s analysis of Mr. Covino’s entitlements.

Conclusion and Order

The Massport system’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate