

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

John Curley, et al.,
Petitioners,

Docket Nos.: CR-24-0724, et al.

v.

State Board of Retirement,
Respondent.

Concerning the appeals of: Fernando Amaral
(No. CR-25-0035), Michael Doherty
(No. CR-25-0036), and John Turowsky (No. CR-
25-0004).¹

ORDER OF DISMISSAL

In this consolidated proceeding, ten correctional employees appeal from decisions of the State Board of Retirement (board) declining to classify them in group 4 under G.L. c. 32, § 3(2)(g). The board moves to dismiss the appeals of petitioners Fernando Amaral, Michael Doherty, and John Turowsky. Those petitioners have capably briefed their opposition. For the reasons that follow, the motion to dismiss is meritorious.

The statutory context is as follows. Under G.L. c. 32, § 5(2)(a), a public employee retiring for superannuation is entitled to an allowance defined as a percentage of his or her pay in certain years. The percentage number is the product of the employee's years of service times an age "factor" between 1.45 and 2.5. Statutory tables assign an age factor to each

¹ The consolidated appeals not addressed by this order are those of petitioners John Curley (No. CR-24-0724), Kevin Pendleton (No. CR-25-0037), Michael Sawyer (No. CR-25-0177), Jeffrey Crowe (No. CR-25-0180), Michael Polidoro (No. CR-25-0237), Nicholas Moses (No. CR-25-0241), and Stephen Sabol (No. CR-25-0242).

employee based on his or her age at retirement and “group.” The tables are built to allow employees in groups 2 and 4 to reach the maximum factor of 2.5 at younger ages; generally speaking, the rules that define groups 2 and 4 seek to cover employees in hazardous lines of work and to draw them into early retirement. *See Spencer v. Civil Serv. Comm’n*, 479 Mass. 210, 220 (2018); *Pysz v. Contributory Ret. Appeal Bd.*, 403 Mass. 514, 518 (1988).

The board represents in its motion that the three pertinent petitioners all entered into service before 2012 and reached age 60 no later than 2024. The petitioners do not dispute these points of fact. It follows from them that by the time the board made its decisions, the three petitioners all qualified for an age factor of 2.5 regardless of whether they were assigned to group 2 or to group 4. The board deduces that the appeals lack practical consequences.²

This tribunal’s authority in cases arising under the retirement law is limited to appeals taken by “aggrieved” parties. G.L. c. 32, § 16(4). *See generally Commissioner of Revenue v. Marr Scaffolding Co.*, 414 Mass. 489, 493 (1993). The term “aggrieved” in the law does not mean “unhappy” or “offended”: parties are “aggrieved” only by actions that affect them adversely in concrete, redressable ways. *See Board of Health of Sturbridge v. Board of Health of Southbridge*, 461 Mass. 548, 557 (2012). In the specific context of retirement benefits, aggrieving decisions are generally those that impact the benefits and contributions payable among members and systems. *See Gloucester Ret. Bd. v. Public Emp. Ret. Admin. Comm’n*, No. CR-21-217, 2025 WL 2322619 (Contributory Ret. App. Bd. June 23, 2025); *Marlborough Ret. Bd.*

² The board describes its argument as based on “mootness,” the correct label if the appeals had lost their practical consequences only after being filed. *See Styler v. Zoning Bd. of Appeals of Lynnfield*, 487 Mass. 588, 595 (2021). *See also Thaddeus v. Secretary of Exec. Off. of Health & Hum. Servs.*, 101 Mass. App. Ct. 413, 417-18 (2022).

v. Public Emp. Ret. Admin. Comm’n, No. CR- 19-14 (Div. Admin. Law App. Apr. 9, 2021); *Bretschneider v. Public Emp. Ret. Admin. Comm’n*, No. CR-09-701 (Div. Admin. Law App. Nov. 13, 2009).

The pertinent petitioners concede that their group classifications will not affect their retirement benefits. By way of an argument that this appeal does carry consequences, they observe that a provision of the federal tax code bestows certain tax advantages on “public safety officers.” 26 U.S.C. § 402(l). But a person’s qualification or non-qualification as a “public safety officer” under federal tax law does not depend on his or her group classification under state retirement law. The applicable federal definition covers various categories of individuals, including any “law enforcement officer,” a term defined as including “police, corrections, probation, parole, and judicial officers.” *See id.* § 402(l)(4)(C); 34 U.S.C. § 10284(9), (14). The federal statute does not inquire into a taxpayer’s status under any state laws. Nor would it make sense for the group 2 and 4 statutes to set the boundaries of the term “public safety officers” for most purposes: those provisions would likely be both overinclusive and underinclusive. *See* G.L. c. 32, § 3(2)(g); *Retirement Bd. of Taunton v. Contributory Ret. Appeal Bd.*, 56 Mass. App. Ct. 914, 915 (2002); *Fine v. Contributory Ret. Appeal Bd.*, 401 Mass. 639, 643 (1988). In short, the briefs offer no reason to believe that classification in group 4 will make the petitioners any more likely or less likely to qualify for any federal tax advantages.

One additional point of analysis applies specifically to Mr. Turowsky. A scheduling order entered before these cases were consolidated required him to file a memorandum and exhibits in March 2025. When Mr. Turowsky missed his deadline, he was directed to show cause why his appeal should not be dismissed for failure to prosecute. In July 2025, when Mr. Turowsky’s

appeal was consolidated into this proceeding, he was advised that he “remains obligated to respond to the order to show cause issued in his individual appeal.” Mr. Turowsky has not complied with these serial orders. He has thus disclosed “an intention not to continue with the prosecution of [his] claim.” 801 C.M.R. § 1.01(7)(g)(2).

In light of the foregoing, it is ORDERED that:

1. The motion to dismiss is ALLOWED. These three appeals (Nos. CR-25-0035, CR-25-0036, and No. CR-25-0004) are SEVERED from this consolidated proceeding and DISMISSED. The severance of the three individual appeals from the consolidated docket is intended to both allow and require any appeals from this order to be taken within 15 days from the date of this decision.
2. The board’s motion for leave to file a reply brief is ALLOWED. The proposed brief is deemed filed and does not need to be resubmitted.
3. The pertinent petitioners’ sur-reply brief is also deemed to have been filed with leave, and also does not need to be resubmitted.

Dated: September 19, 2025

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
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