

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

JEFFREY DUDLEY,

Petitioner-Appellant

v.

LEOMINSTER RETIREMENT BOARD,

Respondent-Appellee.

CR-18-0627, CR-19-0039

DECISION

Pursuant to G.L. c. 32, § 16(4), petitioner Jeffrey Dudley has filed objections to a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), holding that the \$4.00 per shift officer-in-charge pay and \$5,000 annual stipend received by Mr. Dudley because the police department had not hired a captain are not regular compensation. The magistrate held a hearing on April 14, 2022. The DALA decision is dated July 29, 2022. Mr. Dudley filed a timely appeal to us.¹

After giving careful consideration to all the evidence in the record and the arguments presented by the parties, we adopt the magistrate's Findings of Fact 1 – 18 as our own and incorporate the DALA decision by reference. For the reasons discussed in the Conclusion and Order, we affirm adding the following.

We agree with the magistrate that the Officer-in-Charge pay is not regular compensation for the reasons stated and we incorporate the magistrate's decision by reference. In defining

¹ On October 5, 2018, DALA dismissed Mr. Dudley's appeal in Dudley v. Leominster Bd. of Retirement, CR-16-39 (DALA Oct. 5, 2018) for lack of jurisdiction because the Board had not issued an appealable decision with appeal rights. On October 12, 2018, Mr. Dudley requested a final decision from the Board with appeal rights. The Board did not timely respond. On November 20, 2018, Mr. Dudley filed a timely appeal of the Board's failure to respond, and the appeal was docketed as CR-18-0627. On December 20, 2018, the Board finally responded to Mr. Dudley's request for an appealable decision. On January 3, 2019, Mr. Dudley timely appealed the Board's December 20, 2018 decision. This appeal was docketed as CR-19-0039. These two appeals were consolidated.

“regular compensation” under G.L. c. 32, § 1, “[t]he Legislature has carefully set out what may be included in the calculation of a public employee’s retirement allowance,” *Pelonzi v. Ret. Bd. of Beverly*, 451 Mass. 475, 482 (2008), doing so in a manner that is intended to “safeguard against ... adventitious payments to employees which could place untoward, massive, continuing burdens on the retirement systems.” *Boston Ass’n of Sch. Admin. & Supers. v. Boston Ret. Bd.*, 383 Mass. 336, 341 (1981). Courts have interpreted “regular compensation” to include recurrent and repeated payments that are not inflated by extraordinary ad hoc payments such as bonuses or overtime pay. See *Bower v. Contributory Retirement Appeal Bd.*, 393 Mass. 427, 429, 471 N.E.2d 1296 (1984); *Boston Ass’n of Sch. Adm’rs & Supervisors v. Boston Retirement Bd.*, 383 Mass. 336, 339–340, 419 N.E.2d 277 (1981). Further, “‘regular’ as it modifies ‘compensation,’ imports the idea of ordinariness or normality as well as the idea of recurrence.” *Bulger v. Contributory Retirement Appeal Bd.*, 447 Mass. 651, 658 (2006); *Bower v. Contributory Retirement Appeal Bd.*, *supra* at 429, 471 N.E.2d 1296, quoting *Boston Ass’n of Sch. Adm’rs & Supervisors v. Boston Retirement Bd.*, *supra* at 341, 419 N.E.2d 277. See also *Pelonzi v. Retirement Bd. of Beverly*, 451 Mass. 475 (2008); and *O’Malley v. Contributory Retirement Appeal Bd.*, 104 Mass. App. Ct. 778 (2024).

While the definition of “regular compensation” does encompass more than just wages and base salary, those payments still must be guaranteed, of indefinite duration, recurring, and regular. *Id.* The officer in charge pay does not encompass those characteristics as contemplated by the Courts. In fact, the officer-in-charge pay was contingent upon Mr. Dudley annually electing to serve in this capacity and was only paid when he worked a shift in that capacity as noted by the magistrate. Consequently, this pay does not contemplate the idea of “guaranteed,” “nondiscretionary” or of “indefinite duration.” Moreover, Mr. Dudley did not take on the officer in charge duty for every shift, and there was no pattern or schedule that dictated when he took on those duties to be regular or recurring.² Based on the evidence in the record, the magistrate correctly concluded that these payments were not guaranteed, of indefinite duration, ordinary, normal, regular or recurring. The revised regulations defining wages also require that this pay be “made by the employer to the employee because of the character of the work, because of the employee’s length of service, because of the time at which the work takes place as a condition of

² Findings of Fact 3, 4; Exhibits 1, 9, 12, 14-17.

employment in a particular position.” 840 CMR 15.03(3)(b). These conditions do not exist for the officer in charge pay and thus it cannot be considered regular compensation.

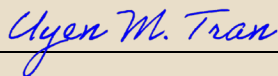
We also agree with the magistrate that the lieutenant stipend was not regular compensation and we incorporate his reasoning by reference. The lieutenant stipend must be “recurring payments for an employee’s services,” *Pelonzi*, 451 Mass. at 479 & 481 (internal quotation omitted), for it to be regular compensation. This stipend was not meant to be continued indefinitely but was to cease upon the City appointing a Captain or Deputy Chief. It was not “recurrent or repeated amount of compensation,” *Boston Ass’n.*, 383 Mass. at 341, as contemplated by the Courts, but rather temporary in nature and only available during the period the positions remained vacant. This stipend was not indefinite but would terminate upon filling these positions. As the magistrate stated, the stipend was a temporary solution to a hiring issue. This conclusion is further supported by the fact that the lieutenant stipend was removed from the 2015-2018 CBA.³

Regardless of the language used in CBAs or what the parties contemplate when drafting CBAs or whether retirement deductions were taken from these payments, Chapter 32 and the regulations define what constitutes regular compensation.

Conclusion. The DALA decision is affirmed. The officer in charge pay and the lieutenant stipend are not regular compensation. Leominster Retirement Board correctly excluded these payments as regular compensation in the calculation of Mr. Dudley’s retirement allowance. **Affirm.**

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



Uyen M. Tran
Assistant Attorney General
Chair
Attorney General’s Appointee



Nicolle M. Allen, Esq.
Governor’s Appointee

³ FF 6, 7, 9; Ex. 11-17.

Patrick M. Charles

Patrick M. Charles, Esq.
Public Employee Retirement Administration
Commission Appointee

Date: December 31, 2024