

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Timothy Gillespie,
Petitioner,

Docket No.: CR-25-0634

Dated: September 4, 2026

v.

State Board of Retirement,
Respondent.

Appearances:

For Petitioner: Zachary N. Green, Esq.

For Respondent: Yande Lombe, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner became a state trooper in 1982, served an 87-day suspension several years later, and eventually retired for accidental disability. Generally speaking, the retirement benefits of a trooper retiring for accidental disability are capped at 75% of the trooper's final annual rate of regular compensation; but the cap does not apply to a trooper who was "continuously a member in service since [January 1, 1988]." G.L. c. 32, § 26(2)(b)(ii). The petitioner was exempt from the 75% cap: during the period of his suspension, he did not become a "member inactive," but rather remained a "member in service." *Id.* § 3(1)(a)(ii).

DECISION

Petitioner Timothy Gillespie appeals from the calculation of his retirement allowance performed by the State Board of Retirement (board). The appeal was submitted on the papers without objection. I admit into evidence exhibits marked 1-9.

Findings of Fact

The following facts are not in dispute.

1. Gillespie became a state trooper in 1982. During 1995-1996, a personnel order suspended Gillespie without pay for reasons not disclosed or material here. The order stated

that the suspension would be 87 days long. Gillespie served the suspension and returned to work. (Exhibits 1, 2, 9.)

2. In the course of a lengthy career, Gillespie sustained serious injuries to his neck and back. Effective in June 2024, the rating board for the state police under G.L. c. 32, § 26, found Gillespie eligible to retire for accidental disability. (Exhibit 3.)

3. Applying provisions discussed below, the board determined that Gillespie's retirement allowance would equal 75% of his final annual rate of regular compensation. Gillespie timely appealed, advocating for a larger allowance under a different interpretation of the same provisions. (Exhibits 6, 7.)

Analysis

Special statutory provisions govern the retirements for accidental disability of "officer[s] of the department of state police." G.L. c. 32, § 26. The formula that determines the allowances awarded to such officers has evolved over time. Leading up to 1988, a retiring officer was entitled to the sum of two components: an annuity calculated to equal the value of the officer's accumulated retirement contributions; plus 72% of the member's final annual rate of regular compensation.¹ See St. 1945, c. 658, § 26(b); St. 1973, c. 721. This formula imposed no cap on the total amount of the allowance.

¹ The phrase "final annual rate of regular compensation" as used in this decision actually denotes the higher number between two alternatives: either the officer's annual rate of compensation at the time of his or her retirement, or the officer's annual rate of compensation at the time of the disabling illness or injury. See St. 1945, c. 658, § 26(b); St. 1973, c. 721; St. 1987, c. 697, § 96.

An amendment effective in 1988² added the following proviso to the governing statute:

[P]rovided . . . that for any employee who was not a member in service on or before [January 1, 1988] or has not been continuously a member in service since such date, the total yearly amount of the sum of [the retirement allowance] shall not exceed seventy-five percent of the [member's final] annual rate of regular compensation

G.L. c. 32, § 26(2)(b)(ii), as amended by St. 1987, c. 697, § 96. To restate the proviso's instructions, the allowance of an officer retiring for accidental disability is ordinarily capped at 75% of the officer's final annual rate of regular compensation; but an officer is exempt from the cap if he or she "has . . . been continuously a member in service since [January 1, 1988]."

The question presented is whether Gillespie is exempt from the 75% cap. It is common ground that he originally entered into public service early enough to qualify for the exemption, having become a trooper in 1982. The parties also agree that Gillespie was continuously a "member" thereafter. The disagreement concentrates on whether Gillespie remained a member "in service" during his 87-day suspension in 1995-1996.

The term "member in service" is discussed in detail in G.L. c. 32, § 3. That statute begins by stating that "[m]embership in a system shall consist of two kinds," namely "member in service" and "member inactive." § 3(1)(a). The statute separately defines each of the two kinds of membership, with the pertinent language reading as follows:

(i) Member in Service.—Any member who is regularly employed in the performance of his duties, except a member retired for disability who . . . is restored to active service Any member in service shall continue as such during any period of authorized leave of absence with pay or during any period of authorized leave of absence without pay . . . if such

² The effective date of the amendment appears to have been January 12, 1988. See St. 1987, c. 697, pmbl., § 135. See also *Ouellette v. Contributory Ret. Appeal Bd.*, 86 Mass. App. Ct. 396, 401 n.7 (2014). Nothing turns on this detail here.

authorized leave of absence without pay is for not more than one year^[3]

(ii) Member Inactive.—Any member in service who has been retired . . . , any member in service whose employment has been terminated . . . , or any member in service who is on an authorized leave of absence without pay other than as provided for in clause (i)

§ 3(1)(a)(i), (ii).

It is convenient to consider first whether Gillespie was a member inactive during the period of his suspension. The clear answer is no. Taking the statutory definition’s three alternatives out of order, Gillespie certainly was not retired at the time of his suspension. And if he qualified as being on a “leave of absence without pay”—a possibility explored further below—that leave of absence *was* “as provided for in clause (i),” in the sense that its duration was “not more than one year.”

That leaves the third alternative, which the board favors, i.e., that Gillespie’s employment was “terminated” when he was suspended. But the suspension was defined from the start as temporary; and in the employment context, a termination unambiguously means a permanent, non-temporary severance of the employer-employee relationship. As the Appeals Court has written, “one cannot be . . . both suspended and terminated at the same time.”

Serrazina v. Springfield Pub. Schs., 80 Mass. App. Ct. 617, 622 (2011), *S.C.*, 464 Mass. 1011 (2013). *See also* G.L. c. 32, § 10(2)(a); *Thaddeus v. Secretary of Exec. Off. of Health & Hum.*

³ Perhaps for the sake of emphasis, the statute adds: “In any event the status of a member in service shall continue as such until [the member’s] death or until his prior separation from the service becomes effective by reason of his retirement, resignation, failure of re-election or reappointment, removal or discharge from his office or position, or by reason of an authorized leave of absence without pay other than as provided for in this clause.”

Servs., 101 Mass. App. Ct. 413, 424 n.13 (2022); *Eye Centers of Am., LLC v. Series Protected Cell 1*, 583 F. Supp. 3d 1105, 1116 (M.D. Tenn. 2022), *aff'd*, No. 22-5138, 2022 WL 13983763 (6th Cir. Oct. 24, 2022). Apparently recognizing that terminations are by nature permanent, the board argues that “during a suspension, a member *may elect to permanently sever* the employment relationship” (emphasis added). That may be so; but until the member has made such an election, the employment relationship remains unsevered, and no termination has occurred.^{4,5}

At this point in the analysis, it becomes pivotal that “[m]embership . . . consist[s] of two kinds.” § 3(1)(a). Given that rule, and given that a suspended member in Gillespie’s circumstances cannot be viewed as a “member inactive,” only two conclusions are possible: either such a member is a “member in service,” or the statute contains an “internal contradiction.” *DiFiore v. Am. Airlines, Inc.*, 454 Mass. 486, 491 (2009). The latter conclusion must be avoided “when possible.” *Id.* See *Commonwealth v. Marquis*, 495 Mass. 434, 444-45 (2025). The contradiction is avoidable here on at least one theory: that a suspension is a kind of a “leave of absence,” namely an *involuntary* leave of absence. The case law has acknowledged the existence of that form of personnel action. See, e.g., *Martell v. Teachers’ Ret. Bd.*, 20 Mass. App. Ct. 188, 189, 190 (1985); *Maguire v. Massachusetts Bay Transp. Auth.*, 20 Mass. App. Ct. 907, 907-08 (1985); *Loconto v. Commonwealth Emp. Rels. Bd.*, 99 Mass. App.

⁴ Also, the option of ending the employment relationship is of course available to all employees, not specifically those serving suspensions.

⁵ A fourth category of member inactive is implicit in § 3(1)(a)(i)’s definition of a “member in service”: namely, a member on an *unauthorized* leave of absence without pay. That category also is not implicated here, where Gillespie’s employer both authorized and required him to be absent.

Ct. 1117, 2021 WL 1185658, at *2 (2021) (unpublished memorandum opinion). It is not necessary to consider alternative constructions that might likewise view a member like Gillespie as a member in service.

To summarize, during his suspension in 1995-1996, Gillespie must have been either a member inactive or a member in service. Given the temporary nature of the suspension, it is implausible to view Gillespie as having been “terminated” and therefore inactive. It is easier to swallow the conclusion that the governing statute treats a brief, temporary suspension as an involuntary period of “leave.” On top of the language-focused considerations already discussed, the general thrust of G.L. c. 32, § 3(1)(a), is that a public employee continues to be treated as a member in service notwithstanding assorted short-term interruptions to his or her employment duties. “Inactive” status tends to materialize only in the wake of a momentous break in the employment relationship, such as a retirement, a termination, or a lengthy absence. It is reasonable enough to view a short-term suspension, despite its disciplinary character, as within the universe of the non-fundamental interruptions that leave the member’s “in service” status intact.⁶

⁶ In support of its contrary position, the board relies largely on *Lynn v. Essex Regional Retirement Board*, No. CR-14-550 (Div. Admin. Law App. May 4, 2018), but that persuasive precedent arose in a different context and does not analyze the issue presented.

Conclusion and Order

Gillespie is exempt from the 75% cap on benefits prescribed by the proviso to G.L. c. 32, § 26(2)(b)(ii). The board's contrary decision is REVERSED.

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Division of Administrative Law Appeals