

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Christine Glasheen,
Petitioner,

No. CR-21-553

Dated: November 17, 2023

v.

State Board of Retirement,
Respondent.

Appearance for Petitioner:
Christine Glasheen (pro se)

Appearance for Respondent:
Melinda E. Troy, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner's right to survivor benefits under G.L. c. 32, § 9 was revived by a legislative amendment in 2000. Nonetheless, the reinstated benefits became effective only as of the date of the petitioner's reinstatement application in 2021.

DECISION

The State Board of Retirement reinstated petitioner Christine Glasheen's survivor benefits under G.L. c. 32, § 9. Ms. Glasheen appeals from the board's determination of the reinstatement's effective date. The appeal was submitted on the papers. I admit into evidence exhibits marked 1-3.

Findings of Fact

The following facts are not disputed.

1. State Trooper Robert MacDougall was killed in the line of duty in 1970. As his widow, Ms. Glasheen became entitled to survivor benefits under G.L. c. 32, § 9. She received those benefits until 1976, when she remarried. (Exhibits 1, 2.)

2. In September 2021, citing developments in the pertinent statutory and decisional law, Ms. Glasheen asked the board to reinstate her survivor benefits. The board granted the request; it determined that the date of the request would serve as the effective date of the reinstated benefits. Seeking an earlier effective date, Ms. Glasheen timely appealed.

(Exhibits 1-3.)

Analysis

The retirement law grants specified benefits to the survivors of members who “died . . . as a result of, and while in the performance of, [their] duties.” G.L. c. 32, § 9(1). The first person identified by the statute as eligible for such benefits is “the surviving spouse.” *Id.*

For many years, the retirement law’s § 9(2)(a) provided that a spouse remains eligible for survivor benefits only “so long as [he or she] survives and does not remarry.” The Legislature amended that provision in Acts 2000, c. 159, § 87, by “striking out . . . the words ‘and does not remarry.’”

The reach of the 2000 amendment was litigated in the *Carell* case. The petitioner there was a survivor who had remarried before 2000. After 2000, she asked her local board to reinstate her benefits. On appeal, CRAB held that the 2000 amendment “is not limited in its application to survivors who remarried after the [amendment’s] effective date.” *Carell v. Boston Ret. Bd.*, No. CR-11-325, at *2 (CRAB Apr. 3, 2013) (*Carell I*). CRAB wrote: “What controls [eligibility for survivor benefits] is the status of the applicant under the law as of the date of the application” *Id.* at *8. CRAB therefore directed the local board to grant the petitioner’s application for reinstatement. *Id.* at *9.

The Superior Court affirmed. Rejecting an argument that CRAB had applied the 2000 amendment retroactively, the Superior Court wrote:

[R]etroactive application would be a declaration that Ms. Carell is entitled to benefits . . . from the date of her remarriage CRAB did not declare that Ms. Carell was entitled to back benefits for that . . . period Indeed, it did not declare her eligible for back benefits from . . . 2000 to the date of her reapplication Rather, CRAB held that at the time of her reapplication . . . she was entitled going forward to surviving spouse benefits under the law as it was then written. That is prospective application.

Boston Ret. Bd. v. Contributory Ret. Appeal Bd., No. 2013-02476-H, at *4-5 (Suffolk Super. Feb. 7, 2014) (*Carell II*). At least one subsequent DALA decision has likewise emphasized that reinstated benefits under *Carell* become effective as of the “date of the application.” *Cedarquist v. Bristol Cty. Ret. Syst.*, No. CR-15-232 (DALA June 29, 2018).

As a practical matter, it would have been difficult for the local boards to identify the survivors whose eligibility for benefits was restored by the 2000 amendment. *See Cedarquist, supra*, at 10-11. It therefore makes sense that the boards must evaluate survivors’ eligibility for benefits as of the date of their reinstatement applications. *See Carell I, supra*, at *8. It does not inevitably follow, however, that reinstated benefits must be computed as recommencing on the date of the reinstatement application. In cases unaffected by pre-2000 remarriages, the boards must receive “proper proof” before they may grant survivor benefits; but upon receipt of such proof, the benefits “become effective as of the date of the death of [the] member.” § 9(2). It would have made some sense for a survivor, upon demonstrating that the 2000 amendment revived his or her entitlement to benefits, to receive benefits calculated as of the amendment’s effective date.¹

¹ The CRAB and Superior Court decisions in *Carell* relied on *Mackay v. Contributory Ret. Appeal Bd.*, 56 Mass. App. Ct. 924 (2002). The question there was whether school social workers, having been made “teachers” by a 1990 amendment, could purchase credit for pre-1990 service under G.L. c. 32, § 3(4). The Appeals Court said yes, explaining that “eligibility to participate in the [§ 3(4)] program is determined by one’s status on the date one applies.” *Id.* at 925. Survivor benefits are meaningfully different from § 3(4) purchases: § 9 does not

Nonetheless, it is reasonably clear from CRAB’s discussion and operative order in *Carell I* that it analyzed matters differently, viewing the date of the survivor’s application for reinstatement as the effective date of the reinstated benefits. That is certainly how *Carell I* was interpreted by the Superior Court in *Carell II* and by the DALA magistrate in *Cedarquist*. CRAB’s holdings remain binding on DALA and the local boards unless and until they are overruled by CRAB itself or by the appellate courts. *See Briggs v. Worcester Reg’l Ret. Bd.*, No. CR-20-384, 2022 WL 9619041, at *3 (DALA Mar. 11, 2022). There was therefore no error in the respondent board’s decision.

Conclusion and Order

The board’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate

necessarily require any “application,” and it determines the benefits’ effective date without reference to any application’s timing.