COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Thomas Goulet,
Petitioner,

v.

State Board of Retirement,
Respondent.

No. CR-22-0151

Dated: May 24, 2024

Appearances:
For Petitioner: Richard C. Chambers, Jr., Esq.
For Respondent: Yande Lombe, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner's employment was terminated after his religious beliefs led him to remain unvaccinated against COVID-19. Because the petitioner did nothing wrong, he cannot be viewed as having been discharged for a "violation" of an applicable law, rule, or regulation within the meaning of G.L. c. 32, § 10(2)(c). That provision therefore does not disqualify the petitioner from retiring for termination.

DECISION

Petitioner Thomas Goulet appeals from a decision of the State Board of Retirement denying his application to retire for termination under G.L. c. 32, § 10(2). The appeal was submitted on the papers under 801 C.M.R. § 1.01(10)(c). I admitted into evidence Mr. Goulet's exhibits marked 1-6 and the board's exhibits marked 1-10.

Findings of Fact

I find the following facts.

1. Mr. Goulet worked for the Northern Essex Community College (NECC) as a custodian. He took that job in April 2001 and became a member of the retirement system administered by the board. (Resp. Ex. 1.)

2. In response to the COVID-19 pandemic, the Massachusetts community college system adopted a uniform vaccination policy. The policy required college employees to provide "proof . . . of full vaccination status." The policy added: "Requests for reasonable accommodations, including requests to be exempt from the vaccine requirement for medical or religious reasons, will be considered consistent with applicable laws . . . . The College will engage in an interactive process to determine if the Employee is eligible for a reasonable accommodation and, if so, whether the requested accommodation is reasonable and does not create an undue hardship for the College and/or does not pose a direct threat to the health or safety of the Employee or others in the learning and working environment." (Resp. Ex. 7.)

3. Mr. Goulet did not become vaccinated against COVID-19. In October 2021, he sent the college a letter requesting an accommodation, i.e., an exemption from the vaccination requirement. He explained there: "Being a person of strong Christian morals for over 20 years, I object to COVID-19 vaccines because I believe in God and in His word and it is against my deep religious convictions to accept the injection of any foreign substance into my body that may violate His will. I live according to God's word that my body is a temple for his Holy Spirit." Mr. Goulet added that he had also refused all other vaccines since becoming a Christian. His letter was interspersed with citations to the bible. It was accompanied by an affidavit and exhibits. (Pet'r Ex. 2.)

4. NECC denied Mr. Goulet's accommodation request in a pair of letters dated in late 2021. The college wrote: "[A]lthough eligible for reasonable accommodation, the campus-wide interactive nature of your position . . . , shift times that cannot be altered or adjusted due to delivery times of supplies, [and] essential functions that cannot be performed remotely create an

inability to safeguard the health and safety of individuals . . . and thus would pose an undue hardship on the College." (Pet'r Ex. 2.)

5. In January 2022, NECC sent Mr. Goulet a termination letter, which stated: "[Y]ou have not achieved compliance with the Employee Vaccination Policy by commencing or completing the vaccination process or receiving an approved reasonable accommodation . . . . [T]he seriousness of your actions with respect to the health and safety risk to the college community provides just cause for discipline. Your actions (or omissions) are considered willful neglect or nonperformance of one or more assigned duties; behavior that seriously interferes with the normal operation of the College . . . ; and/or insubordination . . . ." (Resp. Ex. 5.)

6. Mr. Goulet pursued unemployment benefits. The Department of Unemployment Assistance at first found him ineligible. On Mr. Goulet's appeal, the department's board of review reversed, finding as follows: "The claimant . . . believes his body is a temple and that taking the COVID vaccination, a foreign substance, would violate His will. . . . The claimant's belief in not taking the COVID vaccination or placing nasal testing swabs into his nostrils is religious. . . . [H]e decided not to comply with the employer's policy because of a sincerely held religious belief. Therefore, the claimant is not subject to disqualification." (Pet'r Ex. 1.)

7. Along with other individuals, Mr. Goulet brought suit against NECC in the United States District Court for the District of Massachusetts, asserting that the community college system's vaccination policy violated the federal civil rights laws. The lawsuit remains pending. (Pet'r Ex. 6.)

8. Mr. Goulet also applied to retire for termination under G.L. c. 32, § 10(2). In April 2022, the board denied his application, citing "the facts and circumstances of [Mr. Goulet's] separation from service." Mr. Goulet timely appealed. (Resp. Exs. 1, 6, 8, 9.)

Analysis

The conditions under which a public employee may be entitled to a retirement allowance are stated in a collection of provisions appearing in G.L. c. 32, §§ 5, 10. The various paragraphs of § 10(2) provide for an "enhanced" allowance in cases of "termination." *See Barnstable Cty. Ret. Bd. v. PERAC* (*Fayne*), No. CR-12-572 (CRAB July 25, 2016). It is that benefit that Mr. Goulet seeks.

The dispute centers on § 10(2)(c), which denies a termination allowance to "[a]ny member who is removed or discharged for violation of the laws, rules and regulations applicable to his office or position." The parties agree that NECC's vaccination policy was a "rule" applicable to Mr. Goulet's office or position. *See Kowalski v. State Bd. of Ret.*, No. CR-09-450, at *3-4 (CRAB May 18, 2015). The pivotal question is whether Mr. Goulet was terminated because of a "violation" of the vaccination policy. To cut to the heart of the matter, the uncertainty is whether the word "violation" in this context implies wrongdoing.

"[S]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature." *Rotondi v. Contributory Ret. Appeal Bd.*, 463 Mass. 644, 648 (2012). "Where the statutory language is clear and unambiguous and leads to a workable result, we need look no further." *Harmon v. Commissioner of Correction*, 487 Mass. 470, 479 (2021). When a statute is susceptible to multiple "common meanings," the proper construction is the one that "most appropriately suits [the statute's] intent and purpose." *Ortiz v. Examworks, Inc.*, 470 Mass. 784, 788 (2015).

As a matter of plain meaning, the word "violation" tolerates both possible interpretations. Dictionaries define the word in part as involving a "breach" or "contravention" of a law or rule. *Black's Law Dictionary* 1800 (10th ed. 2014); *Merriam Webster's Collegiate Dictionary* 1319 (10th ed. 1994). These characterizations might reach an innocent person who lands inadvertently

on the wrong side of the law or rule. But other portions of the same definitions speak of "breaking," "disregarding," or "dishonoring" a law or rule. *Black's*, *supra*, at 1800; *Webster's*, *supra*, at 1319. These terms suggest an aspect of deliberateness or impropriety. The Delaware Supreme Court thus concluded, after reviewing dictionary definitions, that "the plain meaning of the word 'violation' . . . involves some element of wrongdoing." *In re Solera Ins. Coverage Appeals*, 240 A.3d 1121, 1132-33 (Del. 2020).

The statutory intent and purpose favor the latter construction. The effect of § 10(2)(c) is to deprive a member of statutory benefits that are available to otherwise similarly situated individuals. In some cases, § 10(2)(c) may leave the affected member with no pension at all. *See Fayne*, *supra*; *Racca v. Boston Ret. Bd.*, No. CR-23-103, 2024 WL 1739377, at *2 n.8 (DALA Apr. 12, 2024). These consequences might be viewed as punitive in nature. *See In re Grand Jury Procs.*, 835 F.2d 375, 376 (1st Cir. 1987). Or they may reflect the law's reluctance to allow people to profit from their wrongful acts. *See generally Dinardo v. Kohler*, 304 A.3d 1187, 1197 (Pa. 2023). It might be particularly galling for people who lose their jobs through their own misbehavior to be rewarded with "enhanced" benefits. But no similar rationale extends to members who ran afoul of a rule through no fault of their own.

Two appellate opinions point in the same direction. One of them involved only a glancing treatment of § 10(2)(c). The Supreme Judicial Court there compiled a list of the "laws of the Commonwealth which preclude the payment of retirement benefits to certain public employees who are discharged or convicted *for misconduct* in office . . . ." *Massachusetts Bay Transp. Auth. v. Massachusetts Bay Transp. Auth. Ret. Bd.*, 397 Mass. 734, 739 (1986) (emphasis added). Section 10(2)(c) made the list. *Id.*

The other opinion featured a more detailed analysis. The member in that matter was a physically incapacitated police officer who was terminated after he failed to report to work. CRAB viewed § 10(2)(c) as inapplicable to his case; a panel of the Appeals Court affirmed, writing:

> [C]onsistent with its past practice, the CRAB interpreted § 10(2)(c)'s forfeiture provision as requiring . . . wilful misconduct. We believe the CRAB's interpretation is correct and is in line with other decisions interpreting the statute. . . . [T]his is not a case of wilful disobedience of a superior's return to work order. CRAB found that [the member] "did not return to work because he was totally and permanently incapacitated for further duty." . . . [The member] was not discharged for a violation of the . . . rules and regulations [applicable] to his position.

Retirement Bd. of Revere v. Contributory Ret. Appeal Bd. (*Hayes*), 48 Mass. App. Ct. 1104, slip op. at *5-6 (1999) (unpublished memorandum opinion).[1] *See also In re Grand Jury Procs.*, 835 F.2d at 376.

With this interpretive perspective in mind, the following features of Mr. Goulet's case take on primary importance. He declined to become vaccinated as a result of a sincere religious belief. He took the actions that the college system's vaccination policy required of employees holding such beliefs. NECC recognized the basic validity of Mr. Goulet's position by deeming him "eligible for reasonable accommodation." It would be fair to say that Mr. Goulet was terminated because the college was unable to fashion such an accommodation.[2]

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[1] The *Hayes* opinion is maintained in DALA's records but apparently not in the online databases. A copy of the opinion was provided to the parties during the pendency of the appeal. A retyped version of it is appended to this decision.

[2] The administrative decisions applying § 10(2)(c) have declined to relitigate the facts and merits of the employer's termination decision. *See Kowalski*, *supra*, at *2. But what does need to be determined is "the reason for" the termination. *Barnstable Cty. Ret. Bd. v. PERAC*, No. CR-12-572, at *2 n.9 (CRAB Jul. 25, 2016). In cases such as this one, it would be misleading to extract the reason for the termination solely from the language of the termination letter, without attention to the context. *Cf. Hayes*, *supra*, slip op. at 6.

Although NECC's decision to fire Mr. Goulet was supported by powerful considerations, it cannot be said that Mr. Goulet engaged in any wrongdoing. It is true that a scientific consensus viewed the COVID-19 vaccine as vital to the health and welfare of the general public. *See Boston Firefighters Union v. City of Boston*, 491 Mass. 556, 564 (2023). But the freedom to refuse medical interventions even in such circumstances is of a constitutional dimension. *See Frazee v. Illinois Dep't of Emp. Sec.*, 489 U.S. 829, 832-34 (1989); *Dalli v. Board of Ed.*, 358 Mass. 753, 758 (1971). In a recent opinion, the Supreme Judicial Court characterized the exercise of that freedom as not only permissible but essentially nonoptional: the Court described an employee with anti-vaccination religious beliefs as lacking "a meaningful choice regarding vaccination given her religious beliefs," and as possessing no "capacity to refrain from violating the employer's [vaccination] policy." *Fallon Cmty. Health Plan, Inc. v. Acting Dir. of Dep't of Unemployment Assistance*, 493 Mass. 591, 597 (2024).

The short of the matter is that the law views Mr. Goulet as blameless. He thus cannot be considered to have committed a "violation" of an applicable law, rule, or regulation within the meaning of G.L. c. 32, § 10(2)(c). *See Hayes*, 48 Mass. App. Ct. at 1104; *Solera*, 240 A.3d at 1132-33. By extension, that statute does not disqualify Mr. Goulet from receiving a termination allowance under the remaining provisions of § 10(2).

Conclusion and Order

The board's decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate

APPENDIX

Retirement Bd. of Revere v. Contributory Ret. Appeal Bd. (*Hayes*), 48 Mass. App. Ct. 1104 (1999) (unpublished memorandum opinion)

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

98-P-1320

REVERE RETIREMENT BOARD

vs.

CONTRIBUTORY RETIREMENT APPEAL BOARD & another.[1]

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The Revere Retirement Board ("board") appeals a Superior Court judgment affirming the Contributory Retirement Appeal Board's ("CRAB") decision granting former Revere police officer Raymond Hayes a retirement allowance under G. L. c. 32, § 10(2)(b). The factual and procedural background of this case is not in dispute, but as it is somewhat involved, we summarize it below.

Hayes began work as a Revere police officer in 1975. On October 2, 1981, Haye experienced chest pain and light-headedness while involved in a high speed police chase. He was diagnosed with a permanently disabling aortic valvular disease which was congenital and, therefore, unrelated to his job.

Hayes' first attempt to receive compensation was an action in the Superior Court pursuant to G. L. c. 41, § 111F. That statute relates to sick leave for police officers disabled in the line of duty. This court affirmed a judgment entered in the

[1] Raymond M. Hayes.

Superior Court against Hayes on the ground that his heart condition was "not a work-related compensable injury." Hayes v. Revere, 24 Mass. App. Ct. 671, 679 (1987). His second attempt, an application for accidental disability retirement, also failed for the same reason. Hayes v. Contributory Retirement Appeal Bd., 38 Mass. App. Ct. 1120 (1995).

On April 27, 1984, while his second action was still pending, Revere's police chief ordered Hayes, who had been out of work on G. L. c. 41, § 111F leave, back to work. When Hayes did not return,[2] the chief removed him from the payroll. Subsequently, on November 27, 1987, Revere's mayor fired Hayes because (1) he did not obey an order to report for work, and (2) he was permanently unable to perform all of his police duties. Hayes filed a late appeal with the Civil Service Commission ("commission"); it dismissed Hayes' appeal as untimely. The Superior Court upheld the dismissal, as did this court. Hayes v. Revere, 36 Mass. App. Ct. 1124 (1994).

Finally, in 1995, Hayes applied for a termination allowance under G. L. c. 32, § 10(2)(b), as an employee with more than six years of creditable service who was removed or discharged from service without moral turpitude. However, G. L. c. 32, § 10(2)(c), provides as follows:

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[2] No one suggests that Hayes' refusal to return to work was other than disability-related.

> "Any member who is removed or discharged for violation of the laws, rules and regulations applicable to his office or position, or any member whose removal or discharge was brought about by collusion or conspiracy, shall not be entitled to the termination retirement allowance provided for in this subdivision."

Based on this section, the board denied the allowance because Hayes' failure to report for work in 1984 was a "violation of the laws, rules and regulations applicable to his . . . position." On appeal, an administrative magistrate in the Division of Administrative Law Appeals (DALA) reversed the board's decision and awarded Hayes the allowance because his failure to report when ordered was not the sole reason for his discharge; the judge ruled that Hayes' discharge was based as much on his physical incapacity to work as it was on his disregard of the order to report to work. Moreover, the judge concluded that "just cause" required for civil service termination, in this instance did not necessarily rise to the level of a "violation of the laws, rules and regulations" under § 10(2)(c). Both the CRAB and the Superior Court upheld that decision. The board appeals.

Our review of a CRAB decision is narrow. This court is required to defer to the CRAB's experience, technical competence, specialized knowledge and discretionary authority. Iodice v. Architectural Access Bd., 424 Mass. 370, 375-76 (1997). See G. L. c. 30A, § 14(7). This court also may not substitute its judgment for that of the CRAB, nor may it dispute the CRAB's choice between two conflicting views, even though this court

might have decided the matter differently had it been before it initially. Retirement Bd. of Brookline v. Contributory Retirement Appeal Bd., 33 Mass. App. Ct. 478, 480 (1992).

On appeal, the board argues that because Hayes was discharged for failing to return to work when ordered to do so (an act of insubordination, neglect of duty, and incompetence under Revere police department rules), he was discharged for violating "the laws, rules and regulations applicable" to his job and thus, has no right to a termination allowance.[3] We disagree and affirm the allowance award.

This case involves interpreting the interaction between statutes, G. L. c. 32, § 10(2)(c) and G. L. c. 32, § 10(2)(b). The latter provides:

> "Any member . . . who has completed six or more years of creditable service, and who, before attaining age fifty-five, . . . is removed or discharged from his office or position without moral turpitude on his part . . . shall

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[3] In affirming the dismissal of Hayes' appeal to the commission, see 36 Mass. App. Ct. 1124 (1994), we stated:

> "The plaintiff's 'just cause' argument appears not to have been argued below. In any event, it also is without merit. In these circumstances, failure to report to work when so ordered would, we think, constitute 'just cause' for discharging."

The board's argument that our language somehow precludes Hayes from obtaining retirement allowance is without merit. At issue in that appeal was the timeliness of Hayes' appeal to the commission. As we noted, Hayes' just cause argument was not argued earlier, and therefore was not properly before this court for decision. Opinion on that issue was dictum only. See, e.g., Miles v. Aetna Cas. & Sur. Co., 412 Mass. 424, 427 (1992).

> have the right upon attaining age fifty-five . . . to apply for a termination retirement allowance . . . ."

While this court is not bound by an agency's erroneous interpretation of a statute, due deference is given to an agency's reasonable and consistent interpretation of a statute that it is bound to implement. See Felix A. Marino Co. v. Commissioner of Labor & Indus., 426 Mass. 458, 460-61 (1998).

In this case, and consistent with its past practice, the CRAB interpreted § 10(2)(c)'s forfeiture provision as requiring Hayes' wilful misconduct. We believe the CRAB's interpretation is correct and is in line with other decisions interpreting the statute. See, e.g., Massachusetts Bay Transp. Authy. v. Massachusetts Bay Transp. Authy. Retirement Bd., 397 Mass. 734, 739-40 (1986). It is also consistent with the interpretation given the similarly worded G. L. c. 32, § 15, which requires forfeiture of retirement benefits upon conviction for "violating . . . the laws applicable to his office or position." See, e.g., Gaffney v. Contributory Retirement Appeal Bd., 423 Mass. 1, 3-4 (1996).

Additionally, while failure to report for work when ordered can be an act of wilful misconduct violating the "laws, rules and regulations applicable to [an employee's] . . . position," it does not necessarily follow that it is always the rule. We agree with the CRAB that this is not a case of wilful disobedience of a superior's return to work order. CRAB found that Hayes "did not

return to work because he was totally and permanently incapacitated for further duty." We cannot disturb this finding as it was supported by undisputed evidence before the CRAB. See Brockton v. Massachusetts Dept. of Pub. Welfare, 352 Mass. 246, 247 (1967). Moreover, the board has consistently based its discharge of Hayes on his failure to report to work when ordered and his inability to perform all police duties. Even before the mayor discharged Hayes, the city voluntarily paid Hayes for two and one-half years under G. L. c. 41, § 111F, because it understood that Hayes' incapacity rendered him unable, not unwilling, to work.

Under these circumstances, we agree that Hayes was not discharged for a "violation of the . . . rules and regulations application to his . . . position." Therefore, we affirm the judgment entered below.

Judgment affirmed.

By the Court (Kass, Smith & Spina,[4] JJ.),

Clerk

Entered: October 20, 1999.

[4] Justice Spina participated in the deliberation of this case while an Associate Justice of this court, prior to his appointment as an Associate Justice of the Supreme Judicial Court.