

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

**LAURENCE HARDOON,
Petitioner-Appellant**

v.

**STATE BOARD OF RETIREMENT,
Respondent-Appellee.**

CR-13-71

DECISION

Petitioner Laurence Hardoon appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) affirming the State Board of Retirement's (SBR) decision to deny his request for a retroactive retirement date. The DALA magistrate heard the matter on May 18, 2016 and admitted seventeen exhibits. The DALA decision is dated April 28, 2017. Hardoon filed a timely appeal to us.

After considering the evidence in the record and the arguments presented by the parties, we adopt the magistrate's findings of fact 1 – 16 as our own and incorporate the DALA decision by reference. We affirm the DALA decision for the reasons explained below adding the following comments.

Background. Hardoon worked for the Middlesex DA's Office as an ADA from February 1978 to September 1991, after which he entered private practice at the age of 40.¹ In contemplation of filing a retirement application, he consulted with SBR and understood his options to be: (1) start collecting a retirement allowance; (2) withdraw his contributions from his retirement fund; or (3) leave his contributions in the retirement fund and be a deferred retiree

¹ FF 1, 2; Exhibit H.

(member inactive).² He elected to leave his contributions in the retirement fund and be a member inactive until a later age to maximize his retirement benefits.³

In 1995, the Legislature amended Chapter 32 by classifying ADAs in Group 4, allowing them to retire at age 55.⁴ Hardoon was unaware of this amendment to the law.⁵ Around the beginning of October 2005, as his 55th birthday approached, Hardoon contacted SBR, who confirmed that after 13 years as an ADA, to maximize his retirement benefits, he had to wait until age 65 to retire.⁶ He did not take any notes of this conversation because the representative had confirmed his information.⁷ In 2012, while accompanying his wife to SBR, he learned that he could have retired at age 55 with a maximum retirement benefit.⁸ He indicated that had he known this information, he would have retired sooner and continued practicing law in the private sector.⁹

On August 16, 2012, Hardoon filed for superannuation retirement with an effective retirement date of September 1, 2012. He completed a Group Classification Questionnaire, requesting Group 4 classification, and SBR accepted the classification on October 25, 2012.¹⁰ In November 2012, he asked SBR to waive a bill totaling approximately \$5,800 for an underpayment caused by a shortfall in deductions withheld while he was an ADA.¹¹ He also inquired whether he could recover seven years of retirement benefits because he could have retired earlier at the age of 55 had he been provided with accurate information.¹² Additionally, he explained that his former wife also lost seven years of benefits because their divorce decree divided his retirement benefit between them.¹³ In February 2013, SBR denied his request for a retroactive retirement date.¹⁴ Hardoon appealed its decision.

² FF 7, 8; Exhibit A, E.

³ FF 7, Exhibit A.

⁴ FF 5; An Act Further Regulating Pensions for District Attorneys 1995, H.R. 2093 (1995).

⁵ FF 6; Exhibit E, F.

⁶ FF 7; Exhibit E.

⁷ FF 8; Exhibit F

⁸ FF 9.

⁹ FF 10.

¹⁰ FF 11, 12; Exhibit D; c. 32 § 3(2)(g).

¹¹ FF 13, Exhibit E.

¹² *Id.*

¹³ *Id.*

¹⁴ FF 15; Exhibit B.

Discussion. Chapter 32 governs a member's entitlement to retirement benefits and provides a legal determination that defines and limits the benefits to which a member is entitled. *Clothier v. Teachers' Ret. Bd.*, 78 Mass. App. Ct. 143 (2010). Those benefits may not be enlarged, even by "an erroneous interpretation" by SBR, any of its employees, or CRAB. *Wylie v. Hamden Cnty. Reg. Ret. Bd.*, CR-15-484 at *1 (CRAB Nov. 28, 2018). As a deferred retiree/member inactive, G.L. c. 32, § 10, establishes the effective date of Hardoon's retirement. Under Section 10(3), a member's retirement allowance is deferred if the Board does not receive the member's application within 60 days after the termination date. G.L. c. 32, § 10(3). Once deferred, a member may at any time thereafter and before attaining the maximum retirement age, file his application with the Board with an effective retirement date that is "not less than fifteen days nor more than four months after the filing of such application but in no event later than the maximum age for his group." *Id.*

Here, the DALA magistrate determined that Hardoon submitted his application for superannuation retirement on August 16, 2012, which became effective on September 1, 2012, the date specified on his retirement application.¹⁵ G.L. c. 32, § 10(3). The magistrate concluded that while Hardoon was provided with inaccurate information, which he relied on, the principle of promissory estoppel does not apply to governmental agencies and that DALA and CRAB do not have equitable powers to grant him a retroactive retirement date in the absence of statutory authority.

Hardoon challenges the DALA decision, contending that erroneous information provided by Board staff led to a forfeiture of benefits to which he was entitled. Relying on the Superior Court decision in *Bristol Cnty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 2004 WL 5048906 (Mass. Super), Hardoon argues that CRAB held that a retirement board is responsible for its failures. Thus, he argues that principles of fairness require that he be granted equitable relief for the inaccurate information. Consequently, Hardoon asserts that he is entitled to a retroactive retirement date to age 55, the age he would have retired had he been provided accurate information.

We do not find Hardoon's argument compelling for several reasons. First, under Chapter 32, retirement boards hold no general fiduciary duty to their members, except with the investment of the systems' funds. *Benoit v. Bristol Country Ret.t Bd.*, CR-04-291 (CRAB 2006);

¹⁵ FF 11.

Belsito v. State Bd. of Retirement, CR-10-735 (CRAB 2012). Further, there is also no fiduciary duty that retirement boards ensure its members maximize their retirement allowance or inform their members of all potential benefits they are eligible for. However, retirement boards have a duty not to mislead their members. While regrettable that SBR staff may have given inaccurate information to Hardoon, there was no evidence SBR mislead Hardoon. *See Thorburn v. Worcester Regional Retirement Bd.* CR- 07-424. *Benoit v. Bristol County Retirement Bd.*, CR-04-291 (CRAB 2006).

In his appeal, Hardoon relied on the Superior Court decision of *Bristol Cnty. Ret. Bd. v. Contributory Ret. Appeal Bd., et al*, 2004 WL 5048906 (Mass. Superior), affirming the decision of CRAB to forgive the repayment of excess earnings pursuant to § 20(5)(c)(3) by Polycarpo. In *Polycarpo v. Bristol County Ret. Bd. and State Ret. Bd.*, CR-01-1105 and 01-1106, (CRAB Jan 31, 2003), CRAB, in concluding that SBR made an error resulting in Polycarpo's excess earnings, expressed that the retirement board "bears the responsibility for failures of the system," and that based on equitable principles, "the Petitioner cannot be harmed by the failures of the Respondents." *Id.* However, the relevant portion of the Superior Court decision that Hardoon relied on was reversed on appeal. *Bristol Cnty. Ret. Bd.*, 65 Mass. App. Ct. 443 (2006). The Appeals Court determined that CRAB "appl[ied] what are essentially equitable principles on behalf of Polycarpo." The statute particular to Polycarpo allowed the retirement board the discretion to forgive the repayment, not CRAB, which the retirement board declined to do. Consequently, the Appeals Court concluded that CRAB had no equitable powers and reversed CRAB's decision that Polycarpo did not have to repay the excess earnings. *Bristol Cnty. Ret. Bd.*, 65 Mass. App. Ct. at 452. Therefore, the proposition in *Bristol County Retirement Board* is that DALA and CRAB do not have equitable powers in the absence of statutory authority. Hence, CRAB is bound by the statute it enforces. Pursuant to G.L. c. 32, § 10(3), Hardoon's effective date of retirement is the date specified on his retirement application – September 1, 2012.

Additionally, Hardoon relied on the principle of promissory estoppel in appealing the denial of his request for a retroactive retirement date.¹⁶ The Appeals Court affirmed in

¹⁶ An Estoppel Theory is established where there has been a misrepresentation intended to induce a course of action from the person to whom the representation is made and that person acts on that information to their detriment. *Celluci v. Sun Oil Co.*, 2 Mass. App. Ct. 722, 728 (1974).

Harrington v. Fall River Housing Authority, 27 Mass. App. Ct. 301, 308 (1989), that estoppel theories generally do not apply against the government. Advocating reluctance to support these types of claims, the Appeals Court in *Harrington* took notice of underlying concerns for public fiscal policy, sovereign immunity, and administrative efficiency. *Id.* The Appeals Court reinforced this decision in *Clothier v. Teachers' Retirement System*, 78 Mass. App. Ct. 143 (2010), where after mistakenly allowing a member to purchase ten years of creditable service, a retirement system took away that service after the member retired, reducing the member's retirement allowance. Clothier asserted an estoppel claim stating that the retirement board was "negligent" and "misrepresented" his eligibility to purchase service credit and his retirement benefits. Clothier further claimed that as a result of this negligence and misrepresentation, he retired from Massachusetts earlier than he otherwise would have, thereby suffering harm. The Appeals Court held that regardless of the error by a public employee retirement system, "entitlement to retirement benefits and the amount of such benefits is governed entirely by G.L. c. 32." *Clothier*, 78 Mass. App. Ct. at 146. The Court further clarified that Clothier could neither claim entitlement to nor reasonably rely upon a retirement benefit when the statutory language did not provide it. *Id.*

Like Clothier, Hardoon contends that SBR was negligent and misrepresented the age at which he could maximize his retirement benefits. He further asserts that as a result of SBR's negligence and misrepresentation, he retired later than he otherwise would have. While the DALA magistrate found Hardoon's testimony credible that he received inaccurate information, CRAB has no authority to grant the remedy Mr. Hardoon seeks in the absence of such authority. The statute defines and limits the benefits Hardoon is entitled to and cannot be enlarged "even by an erroneous interpretation by the [Board] or any of its employees." *Wylie v. Hampden Cnty Reg. Ret. Bd.*, CR-15-484 at *1 (CRAB Nov. 2018) (*citing Clothier*). G.L. c. 32, § 10(3) provides that where a member does not file his retirement application at the end of his service, his retirement becomes effective on the date specified on his application. There is no exception even where a member is given inaccurate information by the Board and relies on it. Here, Hardoon filed his retirement application on August 16, 2012 with an effective retirement date of September 1, 2012. While we may sympathize with Hardoon's circumstances, CRAB does not have statutory authority to employ an equitable remedy in the absence of statutory language. *See, e.g., Early v. State Bd. of Ret.*, 420 Mass. 836 (1995) (Board had no authority to expand

meaning of "member" in G.L. c. 32, § 1, as directed to by judicial order in divorce proceeding); *Petrillo v. Public Employee Ret. Admin.*, CR-92-731, Decision on Reconsideration (CRAB Oct. 22, 1993) (CRAB has no authority to employ equitable remedy in face of specific contrary statutory language). For the above reasons, Hardoon's equity argument for his former wife also fails.

For the reasons discussed above, Hardoon is not entitled to a retroactive retirement date. The DALA decision is affirmed.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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