

**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

**Division of Administrative Law Appeals**

**Maria Holland,**  
Petitioner

v.

Docket No. CR-13-13

Dated: April 1, 2016

**Boston Retirement Board and  
Timothy Holland,**  
Respondent

**Appearance for Maria Holland:**

Anna E. Osterberg, Esq.  
Danehy & Osterberg, P.C.  
5 Old Country Way  
Scituate, MA 02066

**Appearance for Boston Retirement Board:**

Padraic Lydon, Esq.  
General Counsel  
Boston Retirement Board  
One City Hall Plaza, Room 816  
Boston, MA 02201

**Appearance for Timothy Holland:**

Michael Sacco, Esq.  
Law Offices of Michael Sacco, P.C.  
P.O. Box 479  
Southampton, MA 01073-0479

**Administrative Magistrate:**

James P. Rooney, Esq.

**Summary of Decision**

Retirement Board correctly calculated benefit due retiree's ex-wife under a Qualified Domestic Relations Order. Although, due to a statutory change, the retiree had become a member of public employee retirement Group 4 by the time he retired, the Order provided that his ex-wife's benefit was to be calculated as if he had terminated employment at the time of the divorce. He was classified in Group 2 then, and consequently her benefit was appropriately determined using a Group 2 age factor.

**DECISION**

Maria Holland appeals from a decision of the Boston Retirement Board concerning the method by which it calculated the portion of her ex-husband Timothy Holland's pension she is entitled to receive under a Qualified Domestic Relations Order. Mr. Holland was added as a necessary party. After a hearing was scheduled, Mr. Holland moved that the matter be resolved by summary decision. I ordered the parties to appear at the Division of Administrative Law Appeals on August 19, 2015 and to confer beforehand as to whether the case should be resolved after an evidentiary hearing or an argument on the papers. The parties agreed to decide the appeal on the papers; they argued their positions before me on August 19, 2015. I recorded the argument digitally.

In deciding this case, I considered the prehearing memoranda submitted by Ms. Holland (Pleading A), the Retirement Board (Pleading B), and Mr. Holland (Pleading C), and the following documents:

1. Divorce judgment, including Qualified Domestic Relations Order.
2. Motion to approve Qualified Domestic Relations Order.
3. Qualified Domestic Relations Order.
4. City of Boston adoption of Chapter 467 of the Acts of 2008 (February 2, 2009).
5. Letter from Boston Retirement Board dated December 17, 2012.
6. 2012 Board calculation of alternate payee benefit of \$1,180.85.
7. Letter from Boston Retirement Board dated December 27, 2012.
8. Email from Timothy Holland re constructive receipt language of the Qualified Domestic Relations Order (January 10, 2001).
9. A retirement percentage chart for members hired before April 2, 2012.

10. Letter from Boston Retirement Board dated August 18, 2015 explaining its steps in calculating Ms. Holland's benefit.
11. Letter from Attorney Osterberg dated August 19, 2015 commenting on the Board's calculation method..
12. Ms. Holland's appeal.

### **Findings of Fact**

Based on the evidence presented in the exhibits and pleadings, and reasonable inferences drawn from them, I make the following findings of fact:

1. Timothy Holland worked as an emergency medical technician (EMT) for the City of Boston beginning in 1975, and as such was a member of the Boston Retirement System.

(Pleading A; Ex. 9.)

2. Timothy Holland and Maria Holland were divorced in 2001. A Judgment Nisi dated September 28, 2001 became final on December 28, 2001. The divorce judgment incorporated an agreement as to how Mr. Holland's future pension benefit would be divided. (Pleading A;

Ex. 3.)

3. The parties had earlier entered into a separation agreement that provided:

The husband's retirement plan with the City of Boston shall be divided by a Qualified Domestic Relations Order . . . with the Wife receiving one-half of the pension accrued during the marriage. The parties acknowledge that the Husband made contributions to said plan prior to the marriage, and it is expressly agreed that said pre-marital contributions, and contributions subsequent to the agreement are not divided.

(Ex. 3.)

4. The parties agreed to account for Mr. Holland's contributions prior to the marriage by adjusting the percentage used to calculate Ms. Holland's benefit to 33.44% of Mr. Holland's accrued benefit as of the date of the divorce. They were unable to agree whether to use the date of the Nisi decree or the date the divorce became final as the accrual date. Ms. Holland moved

that the Probate Court accept the date of the final judgment as the accrual date. The Court granted the motion. (Pleading A; Ex. 2.)

5. The Qualified Domestic Relations Order, as approved by the Probate Court, read in pertinent part:

This Order assigns to the Alternate Payee [Ms. Holland] an amount equal to Thirty-three and forty-four hundredths of one percent [33.44%] of the Participant's Accrued Benefit under the Retirement Plan, which had accrued as of December 28, 2011 (date of Divorce Absolute), but with benefits commencing at the time of the Participant's actual retirement. The benefit accrued as of December 28, 2001 is the benefit the Participant would have received on a deferred basis at his actual retirement date, as if he had terminated his employment on December 28, 2001.

(Ex. 3.)

6. In 2001, Mr. Holland's job as an EMT was classified as in public employee retirement Group 2. By Chapter 467 of the Acts of 2008, the legislature gave municipalities the option of classifying EMTs as Group 4 employees. The City of Boston adopted this option on February 2, 2009. Thereafter, Mr. Holland was in Group 4. (Pleading A; Ex. 4.)

7. The age factor that retirement boards use in calculating retirement benefits differs between groups. Group 4 members achieve the maximum age factor of 2.5 at age 55, while Group 2 members achieve it at age 60. Up until then, the Group 2 age factor increases by 0.1 per year except for a sizeable bump between age 54 and 55. Then, it increases from 1.4 to 2.0.<sup>1</sup> (Ex. 9.)

8. Mr. Holland retired on October 26, 2012 at age 54 and two months. The Boston Retirement Board calculated Mr. Holland's benefit by considering his highest consecutive three year's salary (\$103,008.05), his Group 4 age factor (2.4), and his 37 years and 8 months of total

---

<sup>1</sup> The significant change is attributable to the statutory provision that treats Group 1 and Group 2 members who retire before age 55 as if they were in Group 1. M.G.L. c. 32, § 10(1).

service. Had he chosen retirement benefits payment Option A, his annual benefit would have been \$82,406.40, with a monthly benefit of \$6,867.20.<sup>2</sup>

9. When the Board turned to the calculation of the portion of Mr. Holland's retirement benefit that should be paid to Ms. Holland, it considered his age at the date of his retirement, 33.44% of his accrued benefit as of December 28, 2001, his highest three years of average salary and creditable service as of that date, and a Group 2 age factor. In a December 17, 2012 letter explaining its calculation, the Board acknowledged that the parties disputed whether Ms. Holland's benefit should be computed using a Group 4 or a Group 2 age factor. The Board stated that there was little case law giving guidance on how to interpret which age factor to use when the Qualified Domestic Relations Order called for the benefit to be determined based on what Mr. Holland "would have received on a deferred basis at his actual retirement, . . . if he had terminated his employment on December 28, 2001." The Board declared that it had determined to use Group 2 because "had Mr. Holland stopped working in 2001, Group 4 would not have been available to him." The Board concluded that it would reach a different conclusion if Ms. Holland provided a court order revoking the current Qualified Domestic Relations Order and substituting a new order that addressed the group classification issue. (Ex. 5.)

10. The Board's initial calculation relied on the wrong age factor for Group 2. When it recalculated the benefit using a 1.4 age factor, it determined that Ms. Holland's monthly benefit would be \$692.44. (Ex. 7.) To reach this result:

The Board calculated the high three years ("final average salary") of Mr. Holland's

---

<sup>2</sup> Mr. Holland, who had remarried, chose Option C, and named his current wife as his beneficiary. This reduced his monthly benefit to \$6,373.50. As the Boston Retirement Board read the Qualified Domestic Relations Order, this increased Ms. Holland's benefit. This aspect of the calculation is not in dispute. (Pleadings A and C; Ex 5.)

salary as of 12/28/01. This was found to be \$66,144.63. This salary was multiplied by the “Age Factor” of 1.4% which is \$962.02. Then the \$962.02 was multiplied by 26.8333 years ([of] creditable service, in years, as of 12/28/01), leaving \$24,848.18. The \$24,848.18 was multiplied by 33.44% as indicated in paragraph 6 of the DRO [Domestic Relations Order], leaving a yearly benefit amount of \$8,309.23, and a monthly benefit amount of \$692.44.

(Ex. 9.)

11. Had the Board used the Group 4 age factor in its calculation, Ms. Holland’s monthly benefit would have been \$1,180.85. (Ex. 6.)

12. Ms. Holland timely appealed on January 9, 2013. (Ex. 12.)

### Discussion

Public pension benefits interests may be assigned to former spouses under a Qualified Domestic Relations Order. *Contributory Retirement Bd. of Arlington v. Mangiacotti*, 406 Mass. 184, 186, 547 N.E.2d 21, 22 (1989). As a consequence, the Boston Retirement Board was obligated to provide Maria Holland the portion of Timothy Holland’s retirement benefit that was described in the Qualified Domestic Relations Order entered in their divorce.

The only question is what retirement age factor should have been used by the Retirement Board. That is a matter of interpreting the language of the Qualified Domestic Relations Order.<sup>3</sup> The Order stated that the benefit to be provided Ms. Holland was to be based on the benefits he had accrued as of December 28, 2001, the date of the divorce. This accrued benefit was defined as the benefit he “would have received on a deferred basis at his actual retirement date, as if he had terminated his employment on December 28, 2001.”

---

<sup>3</sup> I conclude in this decision that the language of the Qualified Domestic Relations Order was clear. Had there been a genuine dispute as to its meaning, that would have been an issue appropriate for resolution by the Probate Court, not DALA. *See Bigwood v. State Bd. of Retirement*, Docket No. CR-12-106 (Mass. Div. of Admin. Law App., Sept. 14, 2012).

The deferral language is consistent with the public employee retirement statute, which allows eligible employees to retire either when they terminate their service or to defer retirement to a later date. *See* M.G.L. c. 32, § 10(3). If a public employee defers retirement in this manner, some of the factors that go into calculating a retirement benefit will change, but others will not. The age factor will change, but the three highest consecutive years of salary will not.

In most circumstances, group classification will not be an issue in a deferred retirement because, whatever the classification was when the employment terminated, that classification will not have changed with time. Here, Mr. Holland's job did not change, but his classification changed seven years after the divorce because of a legislative action that allowed the City of Boston to adopt a local option to classify EMTs as Group 4.

Mr. Holland was in Group 4 when he retired. Hence, his retirement benefit was properly calculated using a Group 4 age factor. But had he terminated employment in 2001 and retired in 2012, the result would have been different because M.G.L. c. 32, § 5(2)(a) provides that:

A member who entered service on or before April, 2, 2012 and seeks Group 2 or Group 4 classification and is no longer a public employee at the time of the member's retirement shall be classified based on the position from which the member was last employed.

Mr. Holland was subject to this provision, and thus had he terminated his employment in 2001 and retired in 2012, his benefit would have been based on his membership in Group 2.

Counsel for Ms. Holland points out that using Group 2 to calculate Ms. Holland's benefit amounts to a huge windfall for Mr. Holland. Because his pension was calculated using a favorable Group 4 age factor, he could retire before age 55 with only a 0.1 age factor difference than if he had retired at age 55, but by doing so, the Group 2 age factor used to calculate Ms. Holland's benefit was reduced from 2.0 to 1.4, leading to a significant reduction in her benefit, and thus a net benefit to him. Counsel argues that this result is inconsistent with the legislative

intent to benefit EMTs and with the intent of the parties as reflected in the Qualified Domestic Relations Order.

I doubt the present scenario was in the mind of the legislature when it passed Chapter 467 of the Acts of 2008. However, the result is not inconsistent with the statute's plain language and purpose. The legislature gave municipalities the option to treat EMTs as Group 4 employees. The inevitable result, if a municipality accepted this option, was that frequently EMTs would find it financially beneficial to retire earlier than they would have if they had remained in Group 2. The legislature was surely aware of this consequence. This appeal presents just one instance of an EMT who retired earlier than might previously have been expected.

Given the way in which the Qualified Domestic Relations Order was written, it was financially beneficial for Mr. Holland to retire before he reached age 55 once his position was reclassified to Group 4. Had he worked until he was 55, he would have ended up with a smaller net retirement benefit than by retiring at age 54, as he did. This would not have been true if he had remained in Group 2. Then he would have had an incentive to wait until age 55 to retire because of the significant increase in the Group 2 age factor between ages 54 and 55. Had he done so, both he and Ms. Holland would have received a larger benefit than if he had retired at age 54. This change in incentives was unlikely to have been contemplated in 2001 at the time of the divorce. But there was no guarantee then that Mr. Holland would work as a public employee until he was 55. Indeed, the Qualified Domestic Relations Order included provisions for dividing the pension benefit if Mr. Holland died before retiring, or was forced to take accidental or ordinary disability retirement. Otherwise, how long Mr. Holland remained a public employee was entirely up to him.

No doubt the parties did not contemplate that Mr. Holland's group classification would

change, and thus did not account for it in the Qualified Domestic Relations Order. DALA, however, lacks the jurisdiction to reform a court order to conform to what the parties might have agreed if they had considered how to divide the pension benefits if Mr. Holland's position was reclassified. That is because a "decree of a probate court cannot be attacked in any collateral proceeding." *Farquar v. New England Trust Co.*, 261 Mass 209, 212, 158 N.E. 836, 838 (1927). I must enforce the Qualified Domestic Relations Order as it was written, and I consequently cannot grant Ms. Holland the relief she requests. I therefore affirm the Boston Retirement Board's decision. Any claim that the Order should be reformed would more appropriately be addressed to the Probate Court.

DIVISION OF ADMINISTRATIVE LAW APPEALS

---

James P. Rooney  
First Administrative Magistrate

Dated: April 1, 2016