

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Richard Huber,
Petitioner,

No. CR-21-577

Dated: January 26, 2024

v.

State Board of Retirement,
Respondent.

Appearance for Petitioner:
Richard Huber (pro se)

Appearance for Respondent:
Melinda E. Troy, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

Acts 1991, c. 412, § 123 provides generous retirement benefits to police officers who transferred into the Department of State Police as part of the 1992 consolidation of the Commonwealth's various police forces. Those benefits are available only to officers who retire at age fifty-five. The respondent board was therefore correct to deny them to the petitioner, an officer who retired at fifty-four.

DECISION

Petitioner Richard Huber appeals from the State Board of Retirement's computation of his retirement allowance. The appeal was submitted on the papers. I admit into evidence the petitioner's exhibits 1-4 and the respondent's exhibits 1-6.

Findings of Fact

The following facts are not in dispute.

1. Mr. Huber became a police officer with the Metropolitan District Commission Police (metropolitan police) in 1988. During 1992, the Legislature combined the

Commonwealth’s various police forces into the Department of State Police (state police). Mr. Huber then served in that body, achieving the rank of lieutenant.

2. Mr. Huber retired for superannuation effective July 2021. He was fifty-four years and seven months old. He had served as an officer for thirty-three years.

3. For retirement purposes, the board classified Mr. Huber in group 3 under G.L. 32, § 3(2)(g). The resulting calculation gave Mr. Huber a retirement allowance equal to 75% of his final year of regular compensation. Seeking to be classified in group 4, Mr. Huber timely appealed.¹

Analysis

The retirement benefits of a Massachusetts public employee are determined in part by the employee’s classification into one of four groups. G.L. c. 32, §§ 3(2)(g), 5(2)(a), 26(3). Group 3 consists of “officers and inspectors of the . . . state police . . .” § 3(2)(g). Group 4 mostly covers employees bearing job titles not relevant here. *Id.*

The dispute stems from section 123 of the act that consolidated the Commonwealth’s various police forces. It states:

[A]ny person serving in . . . the [metropolitan police] . . . who shall have transferred to the [state police] . . . who shall reach his fifty-fifth birthday on or after [the last day of 1992] shall be retired on such fifty-fifth birthday and . . . shall receive a retirement allowance in an amount equal to seventy-five percent of his regular compensation during the twelve month period immediately preceding such fifty-fifth birthday or in an amount equal to the retirement allowance such person would have been eligible to receive under the provisions of Group 4 . . . whichever is greater.

¹ The board expresses reservations about the appeal’s timeliness. According to DALA’s case file, Mr. Huber’s notice of appeal is postmarked fifteen days after the date appearing on the board’s decision letter. *See* G.L. c. 32, § 16(4).

Acts 1991, c. 412, § 123. In simpler terms, this provision prescribes two consequences for an officer transferring from the metropolitan police into the state police. First, the officer will be required to retire at age fifty-five. Second, the officer's retirement allowance will be the greater of two options: either 75% of the officer's last year of regular compensation; or the allowance that the officer would have received as a member of group 4.

Additional context sheds light on section 123's two calculation options. At one time, officers of the metropolitan police belonged to group 4. *See* Acts 1972, c. 809, § 2. The transfer into the state police moved them into group 3. *See* G.L. c. 32, § 3(2)(g). Benefits under group 3 are calculated as follows: they begin with 60% of the retiring officer's last year of compensation; an officer who has served for more than twenty years then receives an increased percentage amount for each extra month of service; the maximum rate, reachable at twenty-five years of service, is 75%. *See* G.L. c. 32, § 26(3)(c). The Legislature thus meant for officers covered by section 123 to receive benefits either under their old group (4) or at the very top of their new one (3).

Mr. Huber is not pursuing a claim that his retirement age should be rounded up (even if he once implied otherwise). He concedes instead that he retired at age fifty-four. The board interprets section 123 as inapplicable to such a person: in the board's view, the provision's two calculation options are available only to officers who retire at fifty-five. The board's interpretation is consistent with a plain reading of the statute. *See generally Harmon v. Commissioner of Correction*, 487 Mass. 470, 479 (2021).

Mr. Huber points out that the federal district court has enjoined the Commonwealth from enforcing the element of section 123 that imposes mandatory retirement at fifty-five. *See Gately v. Commonwealth of Mass.*, No. 92-cv-13018, 1998 WL 518179, at *12 (D. Mass. June 8, 1998).

As a result, the provision no longer operates exactly as the Legislature envisioned. In Mr. Huber's view, section 123's reference to age fifty-five is now obsolete; and any transferee from the metropolitan police into the state police is entitled to the statute's two calculation options, regardless of the age at which he or she retires.

It may be that Mr. Huber's theory is reconcilable, laboriously, with section 123's wording.² Even so, that theory does not match the statute's "intent and purpose." *Ortiz v. Examworks, Inc.*, 470 Mass. 784, 788 (2015). The police-force consolidation project took effect in mid-1992. *See* Acts 1991, c. 412, § 139. The transferees into the state police included officers of all ages and seniority levels. Some of them were much younger than fifty-five. It is unlikely that the Legislature meant to offer section 123's two calculation options—including the one reflecting the benefits of an officer with twenty-five years of seniority—to junior personnel retiring soon after the consolidation effort.

Under the reading of section 123 more consonant with legislative intent, the section gave age fifty-five two roles: it was to be the mandatory retirement age; and also the age at which officers would become eligible for the statute's two calculation options.³ The federal litigation had no impact on the latter point. The result is that section 123's benefits remain unavailable to Mr. Huber.

Mr. Huber's last argument is that the board undertook an inconsistent analysis, applying only one half of section 123 to his case: i.e., the half entitling a retiree to 75% of his last year of

² Mr. Huber's position requires a reading of the statutory language about a person "who shall reach his fifty-fifth birthday on or after [the last day of 1992]" as covering people who reach that birthday after their departures from active service.

³ It is not necessary to determine here whether section 123 benefits are available to officers who retire *after* their fifty-fifth birthdays, although the fair answer would seem to be yes.

compensation. This argument requires little discussion. With section 123 inapplicable, the board calculated Mr. Huber's allowance using the usual group 3 rule stated in G.L. c. 32, § 26(3)(c). It is that rule that yielded the 75% allowance that the board assigned to Mr. Huber. *See supra* p. 3.

Conclusion and Order

AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate