

# MACRS

## **HULL RETIREMENT BOARD v. CRAB, LEARY, AND PERAC, Mass. App. Ct., 2014 WL 4546047 (Sept. 16, 2014)**

*Impact of a Settlement Agreement on the Calculation  
of an Effective Retirement Date*



**Kenneth Hill | Sr. Associate  
General Counsel | PERAC  
October 7, 2014**

**MACRS 2014 FALL CONFERENCE**

## David Leary

- David Leary was a police officer in Hull.
- 11/19/01 - Injured on the job and placed on accidental injury leave with full pay, pursuant to G.L. c. 41, §111F.

## G.L. c. 41, § 111F

- § 111F provides: Whenever a police officer or fire fighter ...is incapacitated for duty because of injury sustained in the performance of his duty without fault of his own..., **he shall be granted leave without loss of pay for the period of such incapacity**; provided, that no such leave shall be granted for any period after such police officer or fire fighter has been retired or pensioned in accordance with law or for any period after a physician designated by the board or officer authorized to appoint police officers or fire fighters in such city, town or district determines that such incapacity no longer exists. **All amounts payable under this section shall be paid at the same times and in the same manner as, and for all purposes shall be deemed to be, the regular compensation of such police officer or fire fighter.** (emphasis added)

## Discontinuation of § 111F Benefits and Application for 7 Benefits

- 4/15/03 -Leary was placed on unpaid leave of absence, discontinuing his § 111F benefits.
- 7/1/03 - Leary applied for accidental disability under G.L. c. 32, § 7.
- G.L. c. 32, § 7(2): “Upon retirement under the provisions of this section a member shall receive an accidental disability retirement allowance **to become effective** on the date the injury was sustained or the hazard or account of which he is being retired was undergone, or on the date six months prior to the filing of the written application for such retirement with the board and his respective employer, or **on the date for which he last received regular compensation for his employment in the public service,** whichever date last occurs.” (emphasis added)

# Approval of § 7 Accidental Disability and Pursuit of § 111F Benefits

- 1/30/04 - Hull Retirement Board (“HRB”) approved his § 7 application. PERAC approved it on 4/1/04, effective 4/16/03, the day after he last received “regular compensation” (his § 111F benefit).
  - Over the course of the next ten years, his effective retirement date is most frequently quoted as 4/15/03.
- Leary continued to seek § 111F benefits from the town, specifically for the period between 4/15/03 and 1/30/04 (the date his § 111F benefits were discontinued through the date his § 7 accidental disability application was granted).
- 4/5/05 - Leary presented his claim for denied § 111F benefits to the Hull Board of Selectmen (“HBS”) (for the period of 4/15/03 - 1/30/04).

## HBS § 111F Approval

- HBS voted to approve the disputed § 111F benefits (for the period 4/15/03 - 1/30/04).
- 1/19/06 - Town manager notified Leary of the HBS's approval of his § 111F benefits, but noted that such approval was contingent on changing his retirement date to 1/30/04.
  - “As you know, in order to receive the additional benefits under the injured on duty statute, your retirement date must be amended and changed from April 15, 2003 to January 30, 2004 *and that decision rests with the Hull Retirement Board.*” (emphasis added).

# Retirement Date

- 2/3/06 - HRB letter to Leary that it could not change his retirement date.
  - Precluded as matter of law from changing retirement date.
  - HRB requested PERAC opinion.
- 5/22/06 - PERAC confirmed that the 4/15/03 date was the correct effective date, because it was the last date he received regular compensation, pursuant to § 7(2).
  - PERAC: Leary had already received and was receiving a retirement allowance based on the 4/15/03 date.
  - PERAC's opinion was that there was no mechanism under G.L. c. 32 to change his effective retirement date.
  - PERAC qualified that it had no special expertise regarding § 111F benefits, but did not believe that the HBS's decision to reinstate § 111F benefits was relevant to changing the retirement date.
- 5/25/06 - HRB letter to Leary denying his request to change his retirement date, because it had no authority to do so under G.L. c. 32.



# Leary's Appeal to CRAB

- 6/9/06 - Leary appealed the denial of his request to change his retirement date to CRAB (CR-06-341), based on HBS's approval of the subject § 111F benefits. CRAB referred the matter to DALA for hearing.
  - HRB and PERAC were both parties, although HRB took the lead in arguing the case.
- HRB reiterated the argument that once an effective retirement date is set, and the member receives an allowance based on that date, the date cannot be altered or corrected.
  - There is no mechanism in G.L. c. 32 which would permit such a change.



# Superior Court Lawsuit and Settlement

- 10/23/06 - While the DALA matter was pending, Leary filed a complaint against the Town of Hull in Plymouth Superior Court.
  - Leary claimed that the failure to pay him the disputed § 111F benefits approved by HBS was a breach of contract and a violation of § 111F.
- 3/20/08 - HBS and Leary executed a Settlement Agreement - and subsequent Agreement for Judgment - intending to resolve the §111F issue, whereby Leary agreed to dismiss the lawsuit and the Town agreed to pay Leary \$44,424.47, which:
  - “represents the compensation owed by the Town to Leary pursuant to the Town’s Board of Selectmen’s April 5, 200[5] vote approving M.G.L. c. 41, § 111F benefits for April 15, 2003 through January 30, 2004...”
- HRB was not a party to the Settlement Agreement.

# Comparison of Terms in Settlement Agreement

The dismissal ... “does not concern, release or otherwise relate to...the recalculation of his retirement benefits by the Hull Retirement Board...”

Money to be held in an escrow account... “pending the outcome of Leary’s efforts to get the Hull Retirement Board ... to recalculate his retirement benefits based on Leary’s receipt of the additional Section 111F benefits.”

# Repayment of § 7 Disability Benefits

- Settlement Agreement also provided that, if his § 111F benefits are recalculated, Leary may be obligated to repay the HRB for accidental disability benefits he received from 4/15/03 - 1/30/04.
  - Reason for this is that a member can't receive both a § 111F benefit and a § 7 accidental disability benefit for the same period of time (4/15/03 - 1/30/04).
- Further provided: “(f) In the event that Leary is not required to return any retirement benefits to the [HRB]... Leary would be required to return the \$44,424.27 held in the Account ...”
  - HRB would later take the position that this clause establishes that Leary had not yet been granted the subject § 111F benefits, and that he may never receive them (in which case he would not have to return any § 7 accidental disability benefits).

# Following the Settlement Agreement

- 7/2/08 - Leary requested that HRB provide him with an estimate of his benefits, based on the Settlement Agreement.
- 7/15/08 and 7/23/08 - HRB notified Leary that it would not recalculate his retirement allowance and would take no further action until DALA ruled on his pending appeal.
- 8/6/08 - Leary filed a second appeal to DALA, this time based on HRB's refusal to recalculate his effective retirement date following the Settlement Agreement.
- 9/15/08 - Parties filed a Motion to Consolidate the two DALA matters (which was eventually granted).

# DALA Hearing and Arguments

- 2/3/10 - DALA hearing (Admin. Magistrate Kenneth J. Forton, Esq.).
  - Thirty-one (31) documents were admitted into evidence.
  - Leary provided the only testimony.
- HRB argument before DALA:
  - The Settlement Agreement Funds were placed in escrow, and Leary had not received any of it to date;
  - Since Leary had not received any § 111F benefits for the disputed period, he therefore had not received any payments after 4/15/03 that would qualify as “regular compensation” within the meaning of G.L. c. 32, § 7(2);
  - The Town of Hull made receipt of G.L. c. 41, § 111F benefits contingent on the resolution of Leary’s request to a legally distinct entity (HRB) under an entirely different statute (c. 32); and
  - There is no mechanism in Chapter 32 that permits HRB to change Leary’s effective retirement date under the circumstances provided.

# Essential Arguments

## ■ Leary

- The Town granted and paid me § 111F benefits for the period 4/15/03 – 1/30/04, so the HRB needs to change my effective retirement date to 1/30/04, the last day I received regular compensation.

## ■ HRB

- Pursuant to the Settlement Agreement, the § 111F funds are in escrow, pending a change in Leary's retirement date to 1/30/04.
- Leary has not received those funds and, therefore, his last day of regular compensation remains 4/15/03.

# DALA Decision

- 9/16/11 - DALA found for Leary, reversing HRB's and PERAC's determinations that the retirement date could not be changed.
  - DALA: money deposited in the escrow account was § 111F compensation for the period April 15, 2003 to January 30, 2004.
    - Relied on language in Settlement Agreement.
  - Once Leary received the \$44,424.27 in § 111F compensation (into the escrow account), the date he last received regular compensation was 1/30/04.
  - Because he last received regular compensation on 1/30/04, the HRB must change the effective date of his retirement to that date, pursuant to § 7(2).
  - Because Leary was paid a § 7 accidental disability allowance from 4/15/03 to 1/30/04, the Board must determine what Leary owes and he must repay it pursuant to G.L. c. 32, § 20(5)(c)(2).
  - The escrow contingencies in the Settlement Agreement concerned Leary having to pay back § 7 retirement benefits, and had “nothing to do with” HRB changing Leary's effective retirement date.



# HRB Notice of Objection

- 9/20/11 - HRB filed a Notice of Objection with CRAB, arguing:
  1. DALA made an improper factual determination that Leary “received” § 111F benefits for the period 4/15/03 - 1/30/04.
    - HRB disputed the Magistrate’s conclusion that the payment of the \$44,424.27 had “nothing to do with” the HRB’s decision to change the effective date of his retirement.
    - The money is held in escrow, pending HRB’s recalculation of Leary’s retirement benefits. If HRB doesn’t change the effective date, Leary doesn’t get the disputed § 111F benefit.
    - In fact, the effective date has not been changed and he still has not “received” any § 111F benefits for the disputed period.
  2. HRB committed no error requiring it to correct under c. 32, § 20(5)(c)(2).
    - § 20(5)(c)(2) provides, in part, that a board must correct an error made in “computing a benefit.” HRB made no error in computing Leary’s benefit, because he last received regular compensation on 4/15/03 and that is the effective date of his retirement.
    - HRB maintained that the calculation was proper at the time it was made, and disputed that it could be retroactively erroneous.
  3. DALA improperly ordered HRB to adjust Leary’s effective date of retirement because there is no provision in c. 32 that permits such an adjustment.

# CRAB Decision

- 4/26/12 - CRAB affirmed the DALA decision.
  - In particular, CRAB agreed that § 111F benefits must be treated as “regular compensation” for purposes of determining the effective date of retirement under § 7(2).
  - Leary received those benefits in the settlement of his Superior Court litigation “even though they were held in escrow pending resolution of his retirement issue.”
  - No question concerning the authority of HRB or PERAC to recompute the effective date of a member’s retirement, based on a change in the date on which the member last received regular compensation.

# HRB Appeals

- HRB appealed to the Superior Court, where CRAB's decision was affirmed, without findings.
- HRB then appealed that ruling to the Mass. Appeals Court.
  - In a September 16, 2014 decision, the Appeals Court affirmed, finding that the escrowed supplemental § 111F payments constituted “regular compensation” received by Leary.
  - Accordingly, his retirement date must be changed to 1/30/04 to comply with § 7(2).
  - Also, there is nothing in c. 32, § 7(2) that limits a retirement board's ability to redetermine and recalculate the effective retirement date, *if circumstances so require*.

# Appeals Court Decision

- The Appeals Court noted that the Settlement Agreement contained provisions for either repayment to the HRB of any prior § 7 accidental disability benefits or reversion of the escrow funds to the town.
- But the Appeals Court found that the Settlement Agreement did not “vest the Board with the authority to veto Leary’s entitlement to payment of the § 111F funds.”
- Thus, the Board’s position that Leary had not actually “received” the additional benefits under the terms of the Settlement Agreement was unfounded.

# This Settlement Agreement

- The issue in this case hinged on the terms and conditions contained within the Settlement Agreement.
- Neither PERAC nor HBR were parties to the Settlement Agreement.
- Conflicts and ambiguity throughout:
  - Stated that the payment of the funds into escrow did not concern or relate to the recalculation of his retirement benefits.
  - But, stated that the funds would be held in escrow pending Leary's efforts to get his effective retirement date recalculated.
  - Also provided for Leary's return to the Town of all the funds held in escrow in the event that he was determined not to be entitled to the additional § 111F benefits.

# PERAC's Position

- It is PERAC's practice to analyze settlement agreements solely under G.L. c. 32, and on a case-by-case basis.
  - In the present case, under G. L. c. 32, Leary last received regular compensation on 4/15/03 and, therefore, that was his effective retirement date.
  - It is PERAC's position that the Appellate decision is limited to the particular terms and conditions of the Settlement Agreement in question.