

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Patricia Jacques,
Petitioner

v.

Docket No. CR-17-667
Date issued: Aug. 11, 2023

Attleboro Retirement Board,
Respondent

Appearance for Petitioner:

Patricia Jacques, *pro se*

Appearance for Respondent:

James H. Quirk, Jr., Esq.
Post Office Box 268
Yarmouthport, MA 02675-0268

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

Ex-wife Petitioner appeals the Board's decision that she is not entitled to any retirement benefit after her ex-husband retired and soon after died. While she was his § 12(2)(d) beneficiary, that benefit is paid only if the member dies before retiring. Ex-husband validly chose Option C allowance with his current wife as beneficiary. Ex-wife is not entitled to receive any benefits from his retirement account because their DRO provides that her entitlement to benefits terminates upon his death.

DECISION

Petitioner Patricia Jacques timely appealed under G.L. c. 32, § 16(4) the decision of Respondent Attleboro Retirement Board, denying the Petitioner's request to make her the beneficiary of her ex-husband's retirement account. Without being directed to,

Petitioner began filing a series of documents. On August 2, 2021, DALA ordered the parties to file pre-hearing memoranda and proposed exhibits. On October 7, 2021, Petitioner filed a letter and a series of documents. On November 8, 2021, the Board filed a response to Petitioner's letter and one page of an obviously two-page letter. DALA scheduled a hearing for February 16, 2022 that was re-scheduled for July 12, 2022. After reviewing the file on July 11, 2022, I determined that the case was not ready for a hearing because several critical documents had not been submitted by the parties. Instead of the hearing, I conducted a teleconference and ordered the parties to produce the documents. On August 8, 2022, the Board submitted a supplement to its first pre-hearing memorandum. On August 25, 2022, the Board submitted additional documents. On October 19, 2022, the Board submitted a copy of Petitioner's divorce file from the Probate and Family Court.

On October 31, 2022, DALA ordered the parties to file a joint pre-hearing memorandum and exhibits and appear for a hearing on March 1, 2023. On February 22, 2023, the parties filed their joint pre-hearing memorandum, which I have marked as Pleading A, along with 30 proposed exhibits. The hearing was held March 1, 2023. I entered 29 exhibits into evidence. (Exs. 1-30.)¹ Petitioner testified on her own behalf. The Board presented no witnesses. The parties made oral closing arguments.

FINDINGS OF FACT

Based on the parties' exhibits, testimony, stipulations, I make the following findings of fact:

1. Stephen P. Jacques was born in 1957. (Stipulation.)

¹ The parties did not submit an Exhibit 25.

2. Mr. Jacques married Petitioner on October 5, 1984. They had two children, born in 1986 and 1989. (Stipulation.)

3. Mr. Jacques began as a fire fighter in Attleboro on January 25, 1988. He was a member of the Attleboro Contributory Retirement System. (Stipulation.)

4. Mr. Jacques and Petitioner² were parties to a divorce in Bristol County. It resulted in a judgment of divorce nisi dated August 28, 2006 and made absolute on November 27, 2006. The Attleboro Retirement Board was not involved in the divorce proceedings. (Stipulation; Ex. 3.)

5. A Separation and Property Settlement Agreement, dated August 23, 2006, provided alimony of \$100.00 per week to Petitioner. It further provided that the alimony obligation would terminate upon the death or remarriage of the wife, the death of the husband, or the husband's retirement. (Ex. 4.)

6. The Settlement Agreement also directed the parties to execute Qualified Domestic Relations Orders (DRO) dividing Mr. Jacques's "pension and . . . deferred compensation plan through the City of Attleboro." The Settlement Agreement further directed:

The DRO shall provide that the plan shall pay to the Wife periodic payments corresponding to the Husband's share . . . , when, as and if the Husband receives periodic payments on his retirement or would be eligible to elect to receive periodic payments on his early retirement under the terms of the plan; or in the event the Husband dies before such payments are begun, then at the earliest possible date at which the Husband would have been eligible to receive such periodic payments under the terms of the plan, had he survived.

(Ex. 4.)

² To, I hope, reduce confusion, I refer to Patricia Jacques as Petitioner because her ex-husband remarried in 2015, and his new wife's name is Tricia. I refer to Mr. Jacques's new wife as Tricia.

7. On August 28, 2006, two DROs were approved by the Probate and Family Court. Neither DRO was reviewed by the Attleboro Retirement Board. (Stipulation; Exs. 9, 12.)

8. The first DRO provided that Petitioner would receive half of Mr. Jacques's Section 457(b) Deferred Compensation Plan in a separate account. Once the original account was divided, neither Mr. Jacques nor Petitioner had any right to each other's divided Section 457(b) accounts. This retirement account and DRO are not part of this appeal. (Ex. 9.)

9. The second DRO divided Mr. Jacques's Chapter 32 retirement benefits. The DRO did not limit which payment option (A, B or C) Mr. Jacques could choose when he retired. The DRO provided calculation methods for superannuation and disability retirement possibilities. It further provided that Petitioner's benefit commences at Mr. Jacques's

actual retirement date and continu[es] while both parties are alive. . . . The Attleboro Retirement Board shall pay directly to [Petitioner] the [Petitioner's] Benefit, awarded by this Order, commencing concurrently with [Mr. Jacques's] benefit and continuing until the first death of either [Mr. Jacques] or [Petitioner].

(Ex. 12.)

10. The Chapter 32 DRO further directed Mr. Jacques to designate Petitioner as his G.L. c. 32, § 12(2)(d) beneficiary so that she would receive a retirement benefit if Mr. Jacques died while he was still a member in service. (Ex. 12.)

11. The Chapter 32 DRO first submitted to the Court listed the Plan Administrator as the Bristol County Retirement Board. As a consequence, the Attleboro Retirement Board did not have an opportunity to review the DRO before the Probate

Court approved it. An amended DRO naming the Attleboro Board as the correct Plan Administrator was later filed with the Court. (Stipulation; Ex. 12.)

12. In April 2014, Mr. Jacques was diagnosed with Stage III colon cancer. (Stipulation; Exs. 13, 15.)

13. Mr. Jacques's last day at work was April 16, 2014. From that day until his retirement, he received benefits under G.L. c. 41, § 111F. (Stipulation; Ex. 17.)

14. Mr. Jacques received treatment for colon cancer and consequently engaged in limited activity. During the course of his treatment, he underwent surgery, oncology treatment, and treatment for blood clots. (Stipulation.)

15. On August 30, 2015, Mr. Jacques married Tricia Mary Roakes in Falmouth, Massachusetts. After the wedding, his wife went by Tricia M. Jacques. (Ex. 29.)

16. Convinced that Mr. Jacques could not return to work, on February 29, 2016 Attleboro Fire Chief Scott T. Lachance filed an application for involuntary retirement with the Board. (Stipulation.)

17. In March 2016, Mr. Jacques's cancer prognosis worsened significantly. (Stipulation.)

18. On March 23, 2016, Mr. Jacques submitted a notarized letter to the Board authorizing his wife, Tricia; his brother, Robert W. Jacques, Jr.; and his friend, Raymond B. Slater, to be given access to his retirement account and files. On August 10, 2016, Tricia executed a similar letter appointing Raymond Slater as her "personal representative" on any matter before the Board. (Exs. 5, 27.)

19. On March 25, 2016, Fire Chief Lachance withdrew his application for involuntary retirement after Mr. Jacques agreed to file his own application for accidental disability retirement. (Stipulation; Ex. 13.)

20. On March 29, 2016, the Board notified Mr. Jacques that it voted to award him superannuation retirement under Option C while he was compiling his application and materials for his accidental disability retirement. He named his wife Tricia as his Option C beneficiary. The beneficiary designation was witnessed by his brother, Robert, and Tricia signed the spousal acknowledgement. (Ex. 14.)

21. Petitioner began receiving half of Mr. Jacques's superannuation retirement benefit in accordance with the terms of the DRO. (Stipulation.)

22. On April 1, 2016, Mr. Jacques applied for accidental disability retirement. (Ex. 15.)

23. On April 11, 2016, Fire Chief Lachance filed the Employer's Statement, agreeing that Mr. Jacques was unable to continue as a firefighter. (Ex. 17.)

24. On April 20, 2016, Dr. Nadine Jackson McCleary submitted a supportive Physician's Statement. (Ex. 16.)

25. A three-physician medical panel examined Mr. Jacques and unanimously concluded that he was disabled from his duties, that it was likely to be permanent, and that his cancer was likely caused by his firefighting activities. (Exs. 20, 21, 22.)

26. On April 25, 2016, PERAC approved Mr. Jacques's superannuation retirement under Option C with an effective date of March 30, 2016. (Ex. 18.)

27. On July 22, 2016, Mr. Jacques changed his Retirement Option to B for his accidental disability retirement application. He named his wife Tricia as the 100%

beneficiary. The Option designation was witnessed by his brother, Robert, and Tricia signed the spousal acknowledgement. (Ex. 19.)

28. On July 28, 2016, the Board sought approval of Mr. Jacques's accidental disability retirement, requesting PERAC to expedite its decision because Mr. Jacques was very ill at that point. (Exs. 23, 27.)

29. On August 1, 2016, Petitioner sought a modification of the prior court judgment and DROs in the Bristol County Probate and Family Court. She filed a supporting affidavit alleging malfeasance and stating essentially that she thought that the DROs provided her with half of Mr. Jacques's retirement account and benefits for the rest of her life, not just until Mr. Jacques's death. (Ex. 10.)

30. On August 4, 2016, PERAC approved Mr. Jacques's accidental disability retirement under Option B with an effective date of March 30, 2016. (Ex. 24.)

31. On August 16, 2016, Mr. Jacques died at his home in Attleboro. The Death Certificate lists metastatic colon cancer as the cause of death. (Ex. 28.)

32. After Mr. Jacques died, in accordance with the DRO, the Board discontinued paying benefits to Petitioner. (Stipulation; Ex. 12.)

33. As Mr. Jacques's spouse, Tricia decided to exercise her right to a G.L. c. 32, § 9 death benefit, which effectively allowed her to continue receiving his accidental disability retirement allowance until her death. (Ex. 11.)

34. On September 22, 2016, the parties to the Probate Court modification action filed a suggestion of death, and on October 5, 2016 the case was dismissed. (Stipulation.)

35. At Petitioner’s request, the Board reviewed the DRO and concluded essentially that Petitioner was not entitled to any retirement benefit after Mr. Jacques’s death because the DRO included a “first to die” provision. Petitioner was not entitled to Option C benefits because Mr. Jacques lawfully designated his wife Tricia as his beneficiary, and the DRO did not require otherwise. The Board also concluded that Petitioner was not entitled to benefits under G.L. c. 32, § 12(2)(d) because those benefits are paid only when a member dies before retiring, while Mr. Jacques had died after he retired. The Board notified Petitioner of her appeal rights under Chapter 32. (Ex. 11.)

36. Petitioner filed a timely appeal of the Board’s decision. (Ex. 1.)

CONCLUSION AND ORDER

For the reasons stated below, the decision of the Attleboro Retirement Board is affirmed.

Petitioner makes several arguments. The first has to do with whether the Board correctly followed the language of the DRO and followed Chapter 32 when it processed Mr. Jacques’s two retirement applications. The Board argues that DALA does not have jurisdiction to decide these kinds of issues because it requires the interpretation of a Probate and Family Court judgment or order. This is not correct. DALA may determine if an order or judgment issued by the Probate and Family Court is being executed as it was written. *See, e.g., Morton v. State Bd. of Retirement*, CR-20-0202 (DALA Apr. 23, 2021).

The DRO unequivocally³ states that the portion of Mr. Jacques’s Chapter 32 retirement benefit to which Petitioner is entitled was to continue only “while both parties are alive” and “continu[es] until the first death of either [Mr. Jacques] or [Petitioner].” It is also undisputed that the DRO does not limit which payment option—A, B or C—Mr. Jacques could choose or whom he could name as beneficiary when he retired.

Petitioner asserts that she is entitled to 50% of what Mr. Jacques had accumulated from 1988, when he started as a firefighter, to 2006, when they were divorced. There are several possibilities for her misunderstanding. The first is that there was a second DRO that covered Mr. Jacques’s 457(b) deferred compensation plan. That other DRO directed that Mr. Jacques’s account be divided into two equal halves as of 2006. Although this account is not the subject of this appeal, Petitioner does not dispute that this account was divided according to that DRO’s instructions.

Another possibility is that Petitioner misunderstood that the provision in the Chapter 32 DRO that stated she was entitled to “one-half (50%) of [Mr. Jacques’s] benefit commencing at the time of [his] actual retirement” included naming her as beneficiary and receiving a lifetime benefit. Petitioner did receive retirement payments during the brief time after Mr. Jacques retired but before he died. As described above, however, other provisions in the DRO clearly state that Petitioner’s right to Mr. Jacques’s retirement benefits ends when he dies.

³ I conclude that the language of the DRO was clear. Had there been a genuine dispute as to the language’s meaning requiring modification of the agreement, that would have been an issue appropriate for resolution by the Probate and Family Court, not DALA. See *Holland v. Boston Retirement Bd.*, CR-13-13 (DALA Apr. 1, 2016); *Bigwood v. State Bd. of Retirement*, CR-12-106 (DALA 2012).

Still another possibility is that Petitioner misunderstood what it meant to be named Mr. Jacques's § 12(2)(d) beneficiary in accordance with the DRO. It meant that she would receive a benefit for the rest of her life only in the event of his death *before he retired*. As soon as he retired, the § 12(2)(d) beneficiary designation became a dead letter. This misunderstanding likely led her to accuse Attleboro of failing to advise her when her name was "taken off" as beneficiary and Mr. Jacques "changed everything last minute." No such thing occurred. Petitioner was Mr. Jacques's § 12(2)(d) beneficiary right up until he retired for superannuation and then named his wife Tricia as his Option C beneficiary, which he was allowed to do under the DRO. Then, when his accidental disability retirement was approved, he named his wife Tricia as his beneficiary again, but this time under Option B. When Mr. Jacques finally succumbed to his cancer, Tricia ultimately elected to collect a § 9 death benefit, which effectively let her continue to receive Mr. Jacques's ADR allowance. *See* G.L. c. 32, § 9. Petitioner cites no law, and I am not aware of any, requiring the Board to notify an ex-wife of any of its members' beneficiary elections.

Petitioner's remaining arguments are about the fairness of the Chapter 32 DRO itself and the process that led to its adoption by the Court. Petitioner complains that she and Mr. Jacques were at first represented by lawyers, but she agreed to Mr. Jacques's suggestion that they mediate their differences without lawyers. Petitioner now feels that the DROs do not reflect what she thought she was getting at the conclusion of the mediation. Here, the Board is correct that these types of collateral attacks on the Probate and Family Court's judgment or the DRO cannot be adjudicated by DALA. *See Farquhar v. New England Trust Co.*, 261 Mass. 209, 212 (1927) (a "decree of a probate

court cannot be attacked in any collateral proceeding”); *Tompkins v. Tompkins*, 65 Mass. App. Ct. 487, 490, 494 (2006) (claim of “discrepancy” between the terms of a separation agreement and a DRO constitutes collateral attack that only Probate Court can address).

For the foregoing reasons, the Board’s decision is AFFIRMED.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Aug. 11, 2023