

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Richard Jarvis,
Petitioner,

Docket No.: CR-24-0531

v.

Boston Retirement System,
Respondent.

Appearances:

For Petitioner: Richard Jarvis (pro se)

For Respondent: Emerson R. Pena, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner is a retiree for accidental disability. His retirement board became entitled to a refund from him under the “excess earnings” provision of G.L. c. 32, § 91A. The refund was not eligible to be waived by the board, because the petitioner had “reason to believe” that he was exceeding his statutory earnings cap. *Id.* § 20(5)(c)(3).

DECISION

Respondent the Boston Retirement System (board) became entitled to a refund from petitioner Richard Jarvis under the “excess earnings” provision of G.L. c. 32, § 91A. Mr. Jarvis seeks a partial waiver of the amount owing from him. In response to a scheduling order, neither party listed potential witnesses or identified factual disputes. The matter is therefore submitted without a hearing. *See* 801 C.M.R. § 1.01(7)(h), (10)(c). I admit into evidence exhibits marked 1-17 in the case file.¹

¹ Exhibits 1-16 were proposed and marked by the board. Exhibit 17 is an emailed submission by Mr. Jarvis dated May 2, 2025.

Findings of Fact

I find the following facts.

1. Mr. Jarvis worked for the Suffolk County Sheriff's Department as a correction officer. In 2009, he retired for accidental disability. At some point thereafter, he took an administrative job with a commercial airline. (Exhibits 1, 12.)

2. In 2017-2022, Mr. Jarvis timely filed annual statements of his earned income with the Public Employee Retirement Administration Commission (PERAC). Upon review of those statements, PERAC determined that, in each year, Mr. Jarvis's earnings exceeded the statutory caps imposed on retirees for accidental disability under G.L. c. 32, § 91A. (Exhibits 2-8.)

3. In June 2024, the board notified Mr. Jarvis of its intention to collect a refund from him equal to the sum of his excess earnings. After a hearing before a hearing officer, the board calculated the total amount owing from Mr. Jarvis as approximately \$120,000. It is not apparent from the record why the board allowed Mr. Jarvis to collect so many years' worth of excess earnings before initiating the refund proceedings. (Exhibits 9-14.)

4. For the purpose of collecting its refund, the board suspended Mr. Jarvis's retirement allowance. He timely appealed. While the appeal was pending, Mr. Jarvis paid the board the full amount owing from him; he clarified in a subsequent submission that he seeks to be allowed "to keep a portion of this money." Mr. Jarvis explained that the refund collected from him has resulted in a "terrible hardship" in light of his "life circumstances, including an ongoing divorce." (Exhibits 14-17.)

Analysis

Retirement allowances under the public retirement law are intended to provide public servants with “security against destitution in their old age.” *Opinion of the Justices*, 364 Mass. 847, 858 (1973). The point is not for an employee to “retire, receive a pension, accept employment elsewhere . . . and, by combining her pension and her new compensation, make more money than if she had not retired.” *Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd. (Polycarpo)*, 65 Mass. App. Ct. 443, 447 (2006). To prevent this scenario, sections 91 and 91A of chapter 32 impose several types of caps on the income that retirees may earn on top of their allowances.

The cap implicated here is prescribed by section 91A, which applies only to retirees for accidental disability. Under that section, retirees must submit annual statements documenting their earned income for each year. When that income is added to a retiree’s allowance, the resulting sum cannot exceed the “regular compensation which would have been payable to [the retiree] if [he or she] had continued in service . . . plus \$15,000.” *Id.* When the cap is exceeded, the retiree must “refund the portion of [the] retirement allowance . . . equal to [the] excess.” *Id.*

There is no dispute in this appeal that Mr. Jarvis’s earnings and allowance exceeded § 91A’s cap in each of the six pertinent years. There is also no dispute about the amounts of the excesses.

The question presented is whether the refund owed by Mr. Jarvis to the board is adjustable downward in light of his financial circumstances. A statute generally applicable to waivers of repayments is G.L. c. 32, § 20(5)(c)(3), which says in part:

[A]t the request of a member who has been determined to owe funds to the retirement system, the board may waive repayment . . . provided that:

(i) the error in any benefit payment . . . persisted for a period in excess of one year;

(ii) the error was not the result of erroneous information provided by the member . . . ; and

(iii) the member . . . did not have reason to believe that the benefit amount . . . was in error.

The applicability of § 20(5)(c)(3) to refunds due from overearning retirees was considered in *Polycarpo*. The member there received erroneous advice about the retirement law from her public employer. 65 Mass. App. Ct. at 444-45. No party contended that she “failed to qualify for relief under any of [§ 20(5)(c)(3)’s] three conditions.” *Id.* at 450. The Appeals Court accepted the parties’ shared view for purposes of that case, but its doubts were palpable. With respect to whether the member had “reason to believe that the benefit amount^[2] . . . was in error,” the court wrote: “satisfaction of [this] requirement might be questioned given that the statute itself arguably placed [the member] on notice that excess earnings had to be repaid.” *Id.* Elsewhere in the opinion, the court omitted the modifier “arguably,” stating: “[The member] was on notice by virtue of the statute that her receipt of

² It may not be natural to think of cases under G.L. c. 32, §§ 91-91A, as involving erroneous benefit amounts. See *Sullivan v. Brockton Ret. Bd.*, No. CR-19-623, 2023 WL 4052393, at *6 (Div. Admin. Law App. June 9, 2023). The court in *Polycarpo* did not raise this concern; and at least § 91A defines the payment potentially owing from the member as a “refund” of a “portion of [the] retirement allowance.” This aspect of the statute suggests that the colloquial term “excess earnings” may be misleading: it is the member’s allowance that can become excessive in light of his or her earnings.

retirement benefits came with the condition that additional earnings from government employment would be limited.” *Id.* at 448.

Retirement for accidental disability provides members with especially generous benefits. *See Murphy v. Contributory Ret. Appeal Bd.*, 463 Mass. 333, 347 (2012). Those benefits are accompanied by § 91A’s serious restrictions. Information about the restrictions was provided to Mr. Jarvis not only through the statute: each year, he filed paperwork about his earnings, the whole point of which was to ensure his compliance with the statutory caps. Unlike the member in *Polycarpo*, Mr. Jarvis received no misinformation from his employer. Yet each year, he outearned his pre-retirement pay by more than the \$15,000 statutory cushion. It is not possible to say that Mr. Jarvis lacked “reason to” believe that he would need to return a portion of his allowance to the board. § 20(5)(c)(3).

The result of the foregoing analysis is that the board lacked authority to waive Mr. Jarvis’s refund. It may be worthwhile to add that even when § 20(5)(c)(3)’s three conditions are met, the board “is entitled to deny, as well as to grant, relief.” *Polycarpo*, 65 Mass. App. Ct. at 451. A board’s decision to insist on repayment is reviewable, at most, for “whether the . . . board abused its discretion.” *Id.* The board in its papers communicates a firm lack of interest in waiving its right to a refund from Mr. Jarvis. The circumstances do not provide a basis for viewing that attitude as an abuse of discretion. Consequently, even if a waiver under § 20(5)(c)(3) were permissible, further proceedings in this case would be futile. *Compare LaPalme v. Worcester Ret. Bd.*, No. CR-19-461, 2023 WL 6806269, at *4 (Div. Admin. Law App. Oct. 6, 2023), with *Feffer v. Massachusetts Teachers’ Ret. Syst.*, No. CR-23-159, 2023 WL 8526445, at *4 (Div. Admin. Law App. Dec. 1, 2023).

Conclusion and Order

The board's decision is AFFIRMED.

Dated: October 31, 2025

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

DIVISION OF ADMINISTRATIVE LAW APPEALS

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