

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

JT TRAVERS,
Petitioner

v.

WINCHESTER RETIREMENT
BOARD
and
PUBLIC EMPLOYEE RETIREMENT
ADMINISTRATION COMMISSION,
Respondents

Docket No. CR-21-0080

Date: November 18, 2022

Appearance for Petitioner:

Nick Poser, Esq.
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Appearance for Respondents:

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Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Winchester Retirement Board's decision that the Petitioner refund \$29,794.24 as an excess payment for 2019 is affirmed. Even though the Petitioner did not receive his pension payment for 2019 until July 2020, G.L. c. 32 § 91A still requires that he refund any excess amount. Otherwise, the Petitioner's position would result in a windfall to which he is not entitled.

DECISION

Pursuant to G.L. c. 32, § 16(4), the Petitioner, JT Travers, appeals a decision by the Winchester Retirement Board ("WRB") that he owed \$29,794.24 in overearnings for calendar year 2019. The dispute took root in a related case previously before the Division of Administrative Law Appeals (DALA). DALA originally awarded the Petitioner accidental disability retirement ("ADR"). *See Travers v. Winchester Ret. Bd.*, CR-13-647 (May 4, 2016) ("*Travers I*"). Following a long appellate process, he was finally given a retroactive payment. It was at this phase that the instant dispute arose. In the course of making his payments current, WRB found he received an excess payment.

The Petitioner filed a timely appeal. The Public Employee Retirement Administration Commission ("PERAC") was added as a necessary party. The parties agreed there were no material facts in dispute and to submit the matter on the motions. On May 18, 2022 they filed a joint statement of facts; on June 21, 2022 the Petitioner file a memorandum of law; on July 15, 2022 the Respondents filed theirs; finally on July 25, 2022, the Petitioner filed a reply memorandum. I now treat these competing memoranda as cross motions for summary decision.

FINDINGS OF FACT

In their pleadings, the parties jointly, and individually, submitted a total of 12 exhibits, which I now admit into evidence.¹

Exhibit List:

- 1) 2019 Annual Statement of Earned Income (5.13.20)
- 2) 2019 Income Verification (6.17.20)
- 3) 2019 W2s and 1040 (5.29.20 & .24.20)
- 4) 2019 Pension Payment Receipt (7.30.20)
- 5) PERAC's Notice of Excess Earnings (12.14.20)
- 6) Notice of Board's Hearing Decision (2.23.21)
- 7) Letter, "Form 91A Incomplete" (6.18.20)
- 8) PERAC letter to Attorney Gibson (2.24.20)
- 9) PERAC letter to WRB (6.4.20)
- 10) Authorization of the Petitioner to release payment to attorney (1.5.12)
- 11) Spreadsheet of 91A earnings and excess amount (undated)
- 12) E-mails between Attorney Poser and PERAC (5.19.20)

Based on the exhibits, I find the following facts.

1. The Petitioner was a firefighter in the Town of Winchester. *Travers I*.
2. He applied for, and was initially denied, ADR benefits. After a hearing, DALA found that he was indeed entitled to them. *Travers I*.
3. WRB appealed the case, but CRAB, a Superior Court, and the Appeals Court upheld the finding. (Stipulated Facts.)
4. The parties ultimately calculated the retroactive payment WRB owed the Petitioner. From the effective date of his retirement in 2011, through 2018, he was entitled to approximately \$405,934.48. (Stipulated Facts; Exhibit 11.)

¹ The Petitioner objected to WRB's proposed Exhibit 7, which is a June 18, 2020 letter to the Petitioner indicating his §91A form was incomplete. The Petitioner does not dispute the accuracy or authenticity of the letter; he merely argues it is irrelevant. WRB explains it was submitted to show the entire chronology of the process. The Petitioner's argument goes to weight, not admissibility. I therefore accept the exhibit into evidence.

5. G.L. c. 32 § 91A allows a retirement board to verify whether someone who is receiving disability benefits has excess earnings which might require them to refund a portion of their payment:

Every person pensioned or retired . . . including accidental disability, shall in each year on or before April fifteenth . . . file with the commission a statement . . . certifying the full amount of his earnings from earned income during the preceding year . . . Said forms and information shall be submitted on or before April fifteenth of each year. . . . If such earnings exceed an amount which when added to the member's retirement allowance is greater than the amount of regular compensation which would have been payable to such member if such member had continued in service in the grade held by him at the time he was retired plus \$15,000, said member shall refund the portion of his retirement allowance for such preceding year equal to such excess[.]

6. Therefore, pursuant to § 91A, PERAC requested financial forms for the entire retroactive time frame, which the Petitioner provided. From that, PERAC calculated that the Petitioner had overearnings totaling \$64,779.21 for calendar years 2011-2018. (Stipulated Facts; Exhibits 8, 9 and 11.)
7. After PERAC subtracted the overearning amount, WRB paid the Petitioner a lump sum of \$341,155.27 in late July 2020. (Stipulated Facts).
8. Meanwhile, the Petitioner separately submitted his annual financial statements, and supporting documents, for calendar year 2019. (Stipulated Facts; Exhibits 1 and 3).
9. To be clear, in an e-mail correspondence with PERAC, the Petitioner's counsel objected to the 91A process going forward *prior* to any pension payment. Counsel suggested that "there is no 91A calculation to be made until and unless he receives his retirement allowance." Nevertheless, the Petitioner complied with the 91A process. (Exhibit 12.)

- 10. On June 17, 2020, the WRB received a salary verification from the Town of Winchester that the current salary for the position from which the Petitioner had retired was \$80,017.64 (Stipulated Facts; Exhibit 2.)
- 11. The Petitioner’s accidental disability retirement allowance for calendar year 2019 was \$53,587.56 (Stipulated Facts; Exhibit 4.)
- 12. On July 30, 2020, the WRB sent the Petitioner a payment of \$80,416.34. This included his benefits for 2019 (\$53,587.56) and 2020, through July (\$26,828.78). (Stipulated Facts; Exhibit 4.)
- 13. PERAC calculated his allowable earnings as \$41,430.08. This derived from calculating the current salary (\$80,017.64), adding \$15,000, G.L. c. 32 § 91A, and subtracting his retirement allowance (\$53,587.56).

$$\begin{array}{rcl}
 & \$80,017.64 & \\
 + & \underline{\$15,000.00} & \rightarrow \\
 & \$95,017.64 & \\
 & & - \\
 & & \underline{\$53,587.56} \\
 & & \$41,430.08
 \end{array}$$

(Stipulated Facts; Exhibit 5.)

- 14. PERAC concluded that his reported earnings for calendar year 2019 were \$71,224.32. (Stipulated Facts; Exhibits 3 and 5.)
- 15. Accordingly, on December 14, 2020, PERAC notified him that, pursuant to § 91A, he owed \$29,794.24 in overearnings for calendar year 2019.

$$\begin{array}{r}
 \$71,224.32 \text{ (2019 actual earning)} \\
 - \underline{\$41,430.08} \text{ (2019 allowable earnings)} \\
 \$29,794.24
 \end{array}$$

(Stipulated Facts; Exhibit 5.)

- 16. On January 26, 2021, WRB held a hearing on the Petitioner’s excess earnings for calendar year 2019. (Stipulated Facts; Exhibit 6.)

17. On February 23, 2021, it issued a decision affirming he owed \$29,794.24 in overearnings. (Stipulated Facts; Exhibit 6.)
18. On that same day, the Petitioner filed a timely appeal with DALA. (Stipulated Facts.)
19. The Petitioner paid the owed amount, under protest. (Stipulated Facts.)

CONCLUSION AND ORDER

A summary decision may be granted when “there is no genuine issue of fact relating to all or part of a claim.” 801 Code Mass. Regs. § 1.01(7)(h). “In such a circumstance, a hearing serves no useful purpose.” *Jordan v. State Bd. of Ret.*, CR-21-0201, 21-043, 22-0061 (Div. of Admin. Law App., Feb. 18, 2022). This is such a case.

“The Petitioner has the burden of proving by a preponderance of the evidence that the [Retirement Board] has applied the law and or its regulations incorrectly or has been culpable in perpetrating a correctible administrative mistake.” *Byrne v. Mass. Teachers’ Ret. Sys.*, Docket No. CR-15-609 (Div. Admin. Law App., Jan. 6, 2018).

The Petitioner’s argument is relatively straightforward. He does not dispute any calculations regarding his retirement allowance, allowable earnings, or excess earnings. He does not deny that he received his disability benefits for calendar year 2019. However, because he received his 2019 benefits in 2020, he argues that he does not have to “refund” any money for calendar year 2019. As he puts it, “[t]he argument that Travers must ‘refund’ ‘overearnings’ for the calendar year 2019 when he did not receive any pension for that year and was not paid his 2019 pension until late July 2020 is absurd and violates the policy that underlies Ch. 32 sec 9 and sec. 91A.” *See* Petitioner’s memorandum of law.

The Petitioner is essentially seeking a windfall. If correct, he never has to repay his 2019 excess benefits because the Board’s process delayed his payment into the next calendar year. The

Petitioner latches onto a few words in § 91A to support his argument. Under § 91A, if PERAC determines that someone was overpaid, that person “shall refund the portion of his retirement allowance for such *preceding year* equal to such excess[.]” G.L. c. 32 § 91A (emphasis added). From that, the Petitioner avers that since he was paid nothing in 2019, the Board cannot ask him in 2020 to refund the excess payment from calendar year 2019, *i.e.* the preceding year. This argument is flawed for a few reasons.

“The purpose of § 91A is to prevent the overpayment of retirement benefits to individuals who are, by their labor, management, or supervision, earning a significant amount of money while simultaneously receiving a disability allowance.” *Boston Retirement Bd. v. Contributory Retirement Appeal Bd.*, 441 Mass. 78, 83 (2004). “‘Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent ...’ and ‘the courts enforce the statute according to its plain wording ... so long as its application would not lead to an absurd result.’” *Martha’s Vineyard Land Bank Comm’n v. Assessors of W. Tisbury*, 62 Mass. App. Ct. 25, 27–28 (2004), quoting *Pyle v. School Comm. of S. Hadley*, 423 Mass. 283, 285 (1996), and *Weitzel v. Travelers Ins. Cos.*, 417 Mass. 149, 153 (1994). “[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.’ ... Courts must ascertain the intent of a statute from all its parts and from the subject matter to which it relates, and must interpret the statute so as to render the legislation effective, consonant with sound reason and common sense.” *Harvard Crimson, Inc. v. President & Fellows of Harvard College*, 445 Mass. 745, 749 (2006), quoting *Hanlon v. Rollins*, 286 Mass. 444, 447 (1934). “Barrenness of accomplishment is not

lightly to be imputed to the legislative branch of the government.” *Flanagan v. Contributory Ret. Appeal Board, et. al.*, 51 Mass. App. Ct.862, 86-68 (2001), quoting *Selectmen of Topsfield v. State Racing Commn.*, 324 Mass. 309, 314 (1949). “The construction of a statute which leads to a determination that a piece of legislation is ineffective will not be adopted if the statutory language ‘is fairly susceptible to a construction that would lead to a logical and sensible result.’” *Ibid.*, quoting *Adamowicz v. Ipswich*, 395 Mass. 757 , 760 (1985), in turn quoting *Lexington v. Bedford*, 378 Mass. 562 , 570 (1979).

The Petitioner’s interpretation runs counter to the purpose of § 91A because it would permit, not prevent, overpayment. It would make the statute ineffective and, also, place a heavy strain on individual retirement boards to make up these unplanned losses. While I do not find the statutory language unambiguously supports the Petitioner’s interpretation, regardless, his interpretation would lead to an absurd result: a total and unearned windfall.

The Petitioner is right that, normally, someone is paid their disability pension and PERAC figures out if they were overpaid the following year. This process makes sense, because PERAC cannot know how much someone earned until the year is over. Thus, PERAC is consistently calculating liability for the “preceding year.” The Petitioner was on a different schedule because he was initially disqualified from accidental disability. The WRB had to retroactively make up his missed payments.² This chronology, while perhaps atypical, does not

² The Petitioner argues that § 91A is not even operative here because it only applies to someone who is “retired,” and he was not “retired” until the Superior Court ruled in his favor in 2021. Quite to the contrary, regardless of when someone applies or is approved, accidental disability is effective “on the date the injury was sustained or the hazard or account of which [the employee] 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 [the employee’s] respective employer, or on the date for which [the employee] last received regular compensation for his employment in the public service, whichever date last occurs.” *Worcester Reg. Ret. Bd. et al. v. PERAC*, 489 Mass. 94, 100 (2022), quoting G.L. c. 32 § 7(2).

warrant differential treatment. *Cf. Worcester Reg. Ret. Bd., supra*, at 102 (different sections of retirement law should be interpreted “to reflect a uniform meaning, regardless of the specific type of retirement at issue.”). It cannot be that the Legislature designed a system to assure retirees are paid only what they deserve, except for a random lucky group of retirees who had their benefits delayed. “[T]here is no language in Section 91A which permits the forgiveness of repayment of excess earnings while the Section 7 award is pending.” *Duval v. Fitchburg Ret. Bd.*, CR-11-579 (Div. Admin. Law App., Apr. 18, 2014).

The Petitioner does not deny he received the payment and, if the payment had arrived six months earlier, he would owe the refund. Asking him to repay it later, when the schedule for calculating it was delayed by litigation, is a commonsense application of the statute. Indeed, there is nothing inequitable about this result, especially when the Petitioner was aware PERAC was working on his case. Having just received his retroactive lump sum payment of \$341,155.27, from which his overearnings had been deducted, he had fair warning as to the approximate amount he was due, and he might owe.

It would be different if the Petitioner had never received a payment, but the Board was nevertheless asking him to pay back excess earnings. That was the scenario in *Brophy v. Plymouth County Ret. Bd.*, CR-16-410, 1-021, 20-0643 (Div. Admin. Law App., Apr. 15, 2022), upon which the Petitioner relies. In *Brophy*, the Board *never* paid the Petitioner his retirement allowance at all—it was withheld to make up for previous overpayments. Nevertheless, the Board calculated his allowable earnings for those years and asked that he “refund” the excess. However, because he never received the annual pension, there was literally no overpayment and thus nothing to refund. Here, the Board is not seeking a refund from withheld funds which were never distributed; the Petitioner *did* receive his payment and so there is something to refund.

While the Petitioner’s argument is creative, it is not a sensible reading of the statutory scheme. WRB’s decision requiring the Petitioner refund \$29,794.24 for calendar year 2019 is affirmed.

Accordingly, the Petitioner’s motion for summary decision is denied. The Respondent’s cross-motion for summary decision is allowed.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate

DATED: November 18, 2022