

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Maria Kukkula,**  
Petitioner,

No. CR-23-0213

Dated: July 26, 2024

v.

**Fitchburg Retirement System,**  
Respondent.

**Appearances:**

For Petitioner: Maria Kukkula (pro se)

For Respondent: Thomas F. Gibson, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner's ex-husband nominated his new wife as his beneficiary for purposes of any option (d) retirement allowance under G.L. c. 32, § 12(2). The respondent retirement board was required to comply with that nomination. The board thus determined correctly that the petitioner is not entitled to benefits in connection with her ex-husband's death.

**DECISION**

Petitioner Maria Kukkula appeals from a decision of the Fitchburg Retirement System determining that she is not entitled to benefits in connection with the death of her ex-husband.

The appeal was submitted on the papers under standard rule 10(c).<sup>1</sup> I admit into evidence exhibits marked 1-9.

**Findings of Fact**

The following facts are undisputed.

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<sup>1</sup> In accordance with G.L. c. 30A, § 9, the "standard rules" in this context are the provisions of 801 C.M.R. § 1.01.

1. Ms. Kukkula’s ex-husband was a firefighter and a member of the respondent retirement system. The couple divorced in 2006. (Exhibits 2-4, 9.)

2. In connection with the divorce proceedings, Ms. Kukkula and her ex-husband executed a separation agreement that stated, in part: “[The ex-husband] shall assign 50% of the . . . value of his . . . retirement plan to [Ms. Kukkula].” The Probate and Family Court then issued a domestic relations order entitling Ms. Kukkula to “an amount equal to 50% of . . . the [ex-husband’s] benefit commencing at the time of the [ex-husband’s] actual retirement.” The order added:

Death prior to retirement: The [ex-husband] hereby agrees to complete the prescribed . . . form . . . designating [Ms. Kukkula] as the beneficiary for a refund equal to 50% of the [ex-husband’s] contributions . . . and to continue to maintain [Ms. Kukkula] as the beneficiary . . . . Such refund shall be payable to [Ms. Kukkula] in the event that the [ex-husband] should die prior to retiring . . . .

[Ms. Kukkula] recognizes that her claims to a death benefit . . . may be defeated by those of a subsequent spouse of the [ex-husband].

(Exhibit 3.)

3. In August 2016, Ms. Kukkula’s ex-husband remarried. Soon thereafter, he filed with the board a form nominating his new wife as his beneficiary for purposes of any option (d) allowance under G.L. c. 32, § 12(2). (Exhibits 5, 6.)

4. In January 2023, Ms. Kukkula’s ex-husband passed away. Ms. Kukkula contacted the board to ask about her entitlements in connection with her ex-husband’s membership. In February 2023, the board determined that no benefits were due to Ms. Kukkula. This appeal followed. (Exhibits 6-8.)<sup>2</sup>

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<sup>2</sup> The appeal was filed in late March 2023. The board acknowledges that it initially transmitted its decision letter to an outdated address. In light of this decision’s result, a hearing to determine the timeliness of Ms. Kukkula’s appeal would serve no useful purpose.

### Analysis

The retirement law prescribes alternative blends of benefits known as options (a)-(c); they are payable upon the member's retirement. G.L. c. 32, § 12(2). In the case of a member who dies without ever retiring, the benefits-related consequences depend on whether the member has or has not selected option (d). *Id.* If the member *has* selected option (d), the member's beneficiary is entitled to a periodic allowance. *Id.* If not, the member's beneficiary or estate is entitled to a refund of the member's accumulated contributions. *Id.* An option (d) beneficiary may be nominated by "written notice on a prescribed form." *Id.*

After he remarried, Ms. Kukkula's ex-husband filed the requisite form nominating his new wife as his option (d) beneficiary. The board was required to comply with that form. It had no authority to dispose of the ex-husband's retirement funds in any other way. *See Early v. State Bd. of Ret.*, 420 Mass. 836, 840 (1995); *Moore v. Boston Ret. Syst.*, No. CR-23-53, 2024 WL 1048146 (DALA Mar. 1, 2024).

Ms. Kukkula's argument on appeal is that her separation agreement and the domestic relations order are designed to give her 50% of her ex-husband's benefits. But the domestic relations order, at least, is more complicated than that. Ms. Kukkula's 50% share under that order applies only to benefits "commencing at the time of . . . actual retirement." The sums at issue in this appeal flow not from the ex-husband's actual retirement but from his death pre-retirement. The domestic relations order acknowledges that Ms. Kukkula's rights as to such sums "may be defeated by those of a subsequent spouse."

In any event, the terms of Ms. Kukkula's divorce were effected by the Probate and Family Court in a suit between Ms. Kukkula and her ex-husband. Any action to enforce the terms of the divorce "lies between those who are parties." *Jump v. State Bd. of Ret.*, No. CR-17-1056, at \*14 (DALA June 14, 2019). *See also Early*, 420 Mass. at 842. The board was not a

party to the divorce proceedings. It acquired no new powers or obligations there. It remains obliged to comply with the retirement law's option (d) provision. *See Fitzmaurice v. State Bd. of Ret.*, No. CR-11-772, at \*3 (DALA Nov. 17, 2012). *See also Moore, supra.*

**Conclusion and Order**

In view of the foregoing, the board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate